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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 conduct a public workshop on Thursday, January 30, 2020 at 9:00 a.m. and a public hearing on Thursday February 6, 2020 at 1:00 p.m. The workshop and hearing will be video-conferenced between the Board's Henderson office located at 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and the Reno office located at 5390 Kietzke Lane, Suite 102, Reno, Nevada, 89511.

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.**
The purpose of the proposed regulation is to amend Chapter 624 of the Nevada Administrative Code to revise the Board's rules of practice which were reviewed in accordance with NRS 233B.050. As a result of this review, it was recognized that clarifying and streamlining changes would enhance the rules of practice, modernize some aspects of the rules to recognize trends and technology improvements, and to remove uncertainty. In addition, AB440 (2019) created an additional disciplinary action regarding builder's warranties. Thus, the regulation establishes an administrative fine range assessment for violating this provision as well as an administrative fine range for violating NRS 624.30165.
- 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 Either the terms or the substance of the regulations to be adopted, amended or repealed or a description of the subjects and issues involved.**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 changes certain provisions related to disciplinary matters before the Board.
- 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.
There is no economic effect on the public. The economic effect upon NRS Chapter 624 licensees is limited to minor compliance-related issues typically limited to timing requirements as opposed to the expenditure of money. Further, contractors subject to discipline after notice and an opportunity to be heard may be impacted by regulations imposing fines as authorized by Nevada statutes.
(b) Both immediate and long-term effects.
There is no immediate economic effect. Long term economic effects will depend upon the number of contested cases that come before the Board; however, the clarification and streamlining of processes created by the regulatory revisions are expected to immediately and continuously reduce overall costs of practice before the Board to licensees and the Board with no expected reduction in the protections for the public's health, safety, and welfare.
- 4. The estimated cost to the agency for the enforcement of the proposed regulation.**
Cost to the agency should be minimal.

5. **A description of and citation to any regulations of other states or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication and overlapping is necessary.**
The proposed regulation does not overlap or duplicate any regulation.
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.**
The regulation creates a new minimum and maximum fine for violation of NRS 624.30165 and expands fines for the violation of Subsection 3, 5, 10 or 11 to include subsection 12 of NRS 624.3016. The administrative fine ranges proposed for these violations are authorized by NRS 624.300.

Persons wishing to comment upon the proposed action of the Board may appear at the scheduled public workshop or may address their comments, data, views or arguments, in written form to the Executive Officer of the Nevada State Contractors Board, 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and the Reno office located at 5390 Kietzke Lane, Suite 102, Reno, Nevada, 89511. Written submissions must be received by the Board five days prior to the scheduled workshop. 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 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074 and the Reno office located at 5390 Kietzke Lane, Suite 102, 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. 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 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
Paseo Verde Library
Sawyer State Building
Clark County Library
Offices of the State Contractors Board in Reno and Henderson
The Board's website www.nscb.nv.gov
State of Nevada Public Notice Website

Dated: December 11, 2019

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

LCB File No. R014-19

December 5, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1, 2, 4-7, 9-12, 19-25 and 27-31, NRS 624.100; §3, NRS 624.100 and 624.3013; §8, NRS 624.100 and 624.335; §§13 and 17, NRS 624.100, 624.341 and 624.361; §§14 and 16, NRS 624.100 and 624.341; §15, NRS 624.100, 624.300, 624.3016, 624.341, 624.361 and 624.710; §18, NRS 624.100, 624.300 and 624.341; §26, NRS 624.100 and 624.170.

A REGULATION relating to contractors; revising provisions relating to disciplinary action by the State Contractors' Board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Contractors' Board to make reasonable regulations. (NRS 624.100) Existing regulations establish procedures for disciplinary action and practice before the Board. (NAC 624.6975-624.7296) **Section 2** of this regulation defines "suspend" as imposing a temporary prohibition against a licensee engaging in work as a contractor. **Section 3** of this regulation establishes a rebuttable presumption that a misrepresented or omitted material fact by an applicant or licensee is not exculpatory. Existing regulations authorize the Board to place a contractor on probation in certain circumstances. (NAC 624.710) **Section 4** of this regulation authorizes the Board to place a contractor whose license may be suspended or revoked on probation so that the contractor may complete the contractor's existing construction projects under conditions deemed necessary to protect the public, the construction project and the owner of the construction project. Existing regulations require the Board to notify a licensee if the Board believes the licensee's financial responsibility is impaired or that the licensee is in violation of state law or regulations. (NAC 624.720) **Section 12** of this regulation authorizes the Board to set a hearing regarding the licensee's financial responsibility or alleged violation of state law or regulations.

Existing law and regulations authorize the Board to establish and impose certain administrative fines and issue citations. (NRS 624.300, 624.3016, 624.341, 624.361, 624.710; NAC 624.7251) **Section 15** of this regulation establishes a new administrative fine for a

violation of state law relating to unfair business practices. **Section 15** also provides an administrative fine for failing to provide a builder's warranty in certain circumstances or failing to respond reasonably to a claim made under a builder's warranty. **Section 15** authorizes the Board to reduce or stay any penalty imposed pending completion of a training program or examination or any other just terms. **Section 15** clarifies existing language describing when a maximum fine may be assessed.

Existing regulations require a cited licensee who hires and pays another licensee to perform a corrective action to be responsible for the hired licensee's failure to comply with the order for corrective action. (NAC 624.72518) **Section 18** of this regulation instead provides that the cited licensee is jointly responsible with the hired licensee for the hired licensee's failure to comply with the order.

Section 20 of this regulation changes the amount of time from 10 days to 7 days after a complaint is deposited with the United States Postal Service that a rebuttable presumption is created that a complaint and notice of hearing has been received by a respondent. (NAC 624.7256) **Section 22** of this regulation changes the deadline from 10 days to 14 days before the hearing by which a request for a continuance of a hearing must be received by the Executive Officer of the Board. (NAC 624.7263) **Section 22** also authorizes the Executive Officer and the Board to waive this requirement and grant a request for a continuance in certain circumstances. Existing regulations outline requirements for submitting papers to the Board in a contested case. (NAC 624.7266) **Section 23** of this regulation adds to those requirements and authorizes parties in a contested case to consent to electronic service. **Section 25** of this regulation requires a party who wishes to oppose a motion to serve and file a written response to the motion 14 days after receiving the motion instead of 10 days after receiving the motion. (NAC 624.7273)

Existing regulations describe the requirements for applying for the issuance of a subpoena. (NAC 624.7276) **Section 26** of this regulation adds certain information that must be included in the application for the issuance of a subpoena. **Section 26** also creates a rebuttable presumption that an application for the issuance of a subpoena that does not meet the requirements is not reasonably calculated to lead to the presentation of admissible evidence.

Section 31 of this regulation requires a petition for a rehearing or reconsideration of a decision of the Board and any related responses or decisions be made not later than 14 days after the appropriate party receives the petition instead of 15 days. (NAC 624.7293)

Existing regulations impose various duties on the Board in taking disciplinary action against a licensee or an applicant for a license. (NAC 624.716, 624.7251, 624.72512, 624.72514, 624.7253, 624.7259, 624.7263, 624.7269, 624.7279, 624.7283, 624.7286, 624.7293) **Sections 11, 15-17, 19, 21, 22, 24, 27-29 and 31** of this regulation authorize the Board's designee to complete those duties. Existing regulations require the Executive Officer of the Board or his or her designee to sign a written administrative citation. (NAC 624.725) **Section 13** of this regulation removes the authorization of the Executive Officer to appoint a designee to sign such

a citation. Existing regulations authorize the Board to consolidate two or more contested cases in certain circumstances. (NAC 624.7269) **Section 24** of this regulation also authorizes the Executive Officer or the Board's designee to consolidate such cases. **Sections 5-10, 14 and 30** of this regulation make conforming changes.

Section 1. Chapter 624 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“Suspend” means to impose a temporary prohibition against a licensee engaging in work as a contractor pursuant to chapter 624 of NRS.*

Sec. 3. *The misrepresentation or omission of a material fact to the Board by an applicant or a licensee creates a rebuttable presumption that the misrepresented or omitted material fact is not exculpatory.*

Sec. 4. *If the Board or its designee has grounds to suspend or revoke a contractor's license or otherwise discipline a contractor, the Board or its designee may place the contractor on probation until the contractor completes the contractor's existing construction projects or portions thereof under conditions deemed necessary by the Board to protect the public, the construction project and the owner of the construction project. The Board or its designee may thereafter suspend or revoke the contractor's license or otherwise discipline the contractor.*

Sec. 5. NAC 624.6975 is hereby amended to read as follows:

624.6975 As used in NAC 624.6975 to 624.7296, inclusive, **and sections 2, 3 and 4 of this regulation**, unless the context otherwise requires, the words and terms defined in NAC 624.6978 to 624.6987, inclusive, **and section 2 of this regulation**, have the meanings ascribed to them in those sections.

Sec. 6. NAC 624.6978 is hereby amended to read as follows:

624.6978 “Complaint” means a document issued by the Executive Officer ~~{of the Board}~~ to a respondent that includes a short and plain statement alleging a violation of a provision of this chapter or chapter 624 of NRS.

Sec. 7. NAC 624.699 is hereby amended to read as follows:

624.699 A written document shall be deemed received by the Board if the document is:

1. Filed at the office of the Board in Henderson, Nevada, or Reno, Nevada, and addressed to the Executive Officer ; ~~{of the Board;}~~ or
2. Presented to the Board at a hearing.

Sec. 8. NAC 624.700 is hereby amended to read as follows:

624.700 1. Any aggrieved person may file with the Board an allegation against any licensee. The allegation must:

- (a) Be written ; ~~{and signed;}~~
- (b) Describe the specific ~~{grievance;}~~ *allegation;* and
- (c) Include any ~~{related}~~ documentation ~~{-}~~ *related to the allegation.*

2. If the Board finds that an investigation is necessary, the Board’s staff shall commence the investigation within 10 days after the date the allegation was filed.

3. If it appears from the investigation that a licensee may have violated the provisions of this chapter or chapter 624 of NRS, the Executive Officer may:

- (a) Request the licensee to take appropriate corrective action;
- (b) Request the licensee to meet informally with the Board’s staff and the ~~{complainant}~~

person who filed the allegation to resolve the issue;

(c) Require the licensee to appear before the Board and show cause why disciplinary action should not be taken against the licensee; and

(d) Take such other actions as the Executive Officer deems appropriate under the circumstances.

Sec. 9. NAC 624.710 is hereby amended to read as follows:

624.710 1. The address of an applicant or licensee which is on file with the Board shall be deemed to be ~~his or her~~ *the* correct address ~~[-An]~~ *of the applicant or licensee.*

2. *Within 30 days after any change of address, an* applicant or licensee shall provide to the Board ~~[-, within 30 days,]~~ written notice of any change of ~~his or her~~ address ~~[-~~

~~2. If the Board has grounds to suspend or revoke a contractor's license or otherwise discipline a contractor, the Board may place the contractor on probation until the contractor completes his or her existing contracts and may thereafter suspend or revoke his or her license or otherwise discipline the contractor.]~~ *of the applicant or licensee.*

Sec. 10. NAC 624.713 is hereby amended to read as follows:

624.713 1. A notice that the Board provides to a licensee pursuant to NAC 624.7256 will include:

(a) A copy of the complaint;

(b) The date by which the licensee is required to submit an answer or responsive pleading and any supporting documents to the Board;

(c) A statement that the licensee is entitled to a hearing only if the licensee complies with the provisions set forth in paragraph (b); and

(d) A statement that the failure of the licensee to comply with the provisions of subsection 2 may cause the Board to enter a default order against the licensee.

2. The answer required by paragraph (b) of subsection 1 must be in writing, signed by the respondent or ~~his or her representative,~~ *the respondent's attorney* and include a specific response to each allegation in the complaint. The response must admit or deny the allegation, or state that the respondent has insufficient information to admit or deny the allegation.

Sec. 11. NAC 624.716 is hereby amended to read as follows:

624.716 1. If a licensee receives a notice from the Board pursuant to NAC 624.7256, the licensee is entitled to a hearing only if the licensee complies with the provisions of paragraph (b) of subsection 1 of NAC 624.713. If the licensee fails to comply with those provisions, the Board *or its designee* will hold a hearing to determine whether it will enter a default order against the licensee.

2. The Board *or its designee* may consider at the hearing:

(a) The complaint and any amended complaints provided to the licensee;

(b) Any notices provided to the licensee pursuant to NAC 624.7256;

(c) Any communication between the Board and the licensee; and

(d) Any other evidence relating to the allegations set forth in the complaint or amended

complaints.

3. The Board *or its designee* may:

(a) Include evidence presented at the hearing in its findings of fact and conclusions of law;

and

(b) Enter a default order against the licensee.

4. If the Board *or its designee* enters a default order against the licensee, the Board *or its designee* will:

(a) Send to the licensee by certified mail, return receipt requested, a copy of the default order, including any findings of fact and conclusions of law, not later than ~~10~~ 7 days after the Board enters its order; and

(b) Take such disciplinary action against the licensee as it deems appropriate.

5. A licensee against whom a default order is entered may submit to the Board a written request for reconsideration of the order not later than ~~15~~ 14 days after receiving a copy of the order. The written request must set forth the reasons for reconsideration by the Board ~~it~~ *or its designee*.

6. The Board or its designee will review the request to determine whether there is good cause for reconsideration of the order. If the Board or its designee determines that good cause for reconsideration exists, the Board or its designee will schedule a hearing and notify the licensee, in writing, of the time and place of the hearing. *The Board or its designee will schedule the hearing for not later than 90 days after the decision granting reconsideration of the order is made.*

Sec. 12. NAC 624.720 is hereby amended to read as follows:

624.720 If the Board believes that a licensee's financial responsibility is impaired or that ~~he or she~~ *the licensee* is in violation of chapter 624 of NRS or this chapter, the Board will so notify the licensee ~~it~~ *and may set a hearing regarding the financial responsibility of the licensee or the alleged violation by the licensee of chapter 624 of NRS or this chapter.*

Sec. 13. NAC 624.725 is hereby amended to read as follows:

624.725 A written administrative citation issued pursuant to NRS 624.341 may be served by personal service on the person named in the administrative citation, or a designated representative thereof, or by certified mail to the address of record of the person and must include, to the extent applicable:

1. The name and last known business or residential address of the person;
2. A numbered identification of the person;
3. The date on which the citation is issued;
4. The number of the citation;
5. A list of the sections of this chapter or chapter 624 of NRS which the person is alleged to have violated and a description of the alleged violation;
6. Corrective actions, if any, ordered against the person;
7. Administrative fines, if any, to be assessed against the person;
8. The reimbursement costs, if any, which the person is ordered to pay to cover the costs of any investigation;
9. The date by which the person must complete any corrective actions ordered;
10. The date by which the person must pay any administrative fines or reimbursement of investigative costs;
11. A description of the manner in which the person may contest the citation, including, without limitation, the period during which the person may contest the citation and the consequences of failing to contest the citation timely;
12. The signature of the Executive Officer ; ~~for his or her designee;~~ and
13. Any other information required by the Board.

Sec. 14. NAC 624.72505 is hereby amended to read as follows:

624.72505 A written administrative citation issued pursuant to NRS 624.341 may be withdrawn:

1. By the Board at any time.
2. By the Executive Officer : ~~{of the Board:}~~
 - (a) Before the citation is deemed a final order of the Board pursuant to NRS 624.345; or
 - (b) If the cited person contests the citation, before the commencement of the hearing required pursuant to NRS 624.351.

Sec. 15. NAC 624.7251 is hereby amended to read as follows:

624.7251 1. If the Board or its designee issues an order imposing an administrative fine pursuant to the provisions of this chapter and chapter 624 of NRS, each such fine assessed by the Board or its designee must:

- (a) Specify the violation for which the person is being cited; and
- (b) Subject to the provisions of subsections 2, 3 and 4, be in an amount which is not less than the minimum amount or more than the maximum amount as follows for the violation:

Violation	Minimum Fine	Maximum Fine
NRS 624.301.....	\$1,000	\$10,000

Violation	Minimum Fine	Maximum Fine
Paragraph (a) of subsection 1 or subparagraph (4) of paragraph (b) of subsection 1 of NRS 624.3011.....	500	10,000
Subparagraph (1), (2) or (3) of paragraph (b) of subsection 1 of NRS 624.3011.....	1,000	10,000
Subsection 1, 2 or 3 of NRS 624.3012	1,000	10,000
Subsection 4 of NRS 624.3012.....	500	10,000
Subsection 1 or 4 of NRS 624.3013	250	10,000
Subsection 2 of NRS 624.3013.....	1,000	10,000
Subsection 3 of NRS 624.3013.....	500	10,000
Subsection 5 of NRS 624.3013.....	50	10,000
NRS 624.3014.....	100	50,000
Subsection 1 or 6 of NRS 624.3015	250	10,000
Subsection 2, 3 or 4 of NRS 624.3015	1,000	50,000
Subsection 5 of NRS 624.3015.....	500	10,000
Subsection 1, 2, 4, 6, 7 or 8 of NRS 624.3016	250	10,000
Subsection 3, 5, 10, 11 <i>or 12</i> of NRS 624.3016.....	500	10,000
Subsection 9 of NRS 624.3016.....	100	10,000

Violation	Minimum Fine	Maximum Fine
<i>NRS 624.30165</i>	250	10,000
Subsection 1 of NRS 624.3017.....	500	10,000
Subsection 2 of NRS 624.3017.....	50	10,000
Subsection 3 of NRS 624.3017.....	100	10,000
Subsection 1 of NRS 624.302.....	1,000	50,000
Subsection 5 or 6 of NRS 624.302	250	10,000
Subsection 7 of NRS 624.302.....	1,000	10,000
Subsection 1 of NRS 624.305.....	1,000	50,000
NRS 624.520.....	100	250
Subsection 1 of NRS 624.700.....	1,000	50,000
Subsection 1, 3 or 4 of NRS 624.720	1,000	50,000
NRS 624.740.....	1,000	50,000

2. In determining the amount of an administrative fine to be imposed pursuant to subsection 1, the Board or its designee will consider the factors set forth in paragraphs (a), (b) and (c) of subsection 4 of NRS 624.300 and paragraphs (a), (b) and (c) of subsection 2 of NRS 624.710, as applicable.

3. Unless otherwise prohibited by law, the Board or its designee may reduce or stay a fine assessed pursuant to subsection 1 ***or any other penalty imposed pursuant to this chapter or***

chapter 624 of NRS pending completion of a training program or examination required by the Board ~~{}~~ *or its designee or upon any other just terms.*

4. The Board or its designee ~~{will}~~ *may* assess the maximum fine listed in subsection 1 only if one or more of the following circumstances apply:

(a) The cited person has a history of violating the same or similar sections of NRS ~~{}~~, *NAC or any relevant administrative order;*

(b) The administrative citation specifies more than one violation;

(c) The cited person has ~~{exhibited bad faith by ignoring}~~ *unreasonably ignored* written warnings;

(d) The violation or violations have caused harm to other persons;

(e) The violation or violations were perpetrated against a ~~{senior citizen}~~ *person 60 years of age or older* or a person with a *diagnosed physical or mental* disability; or

(f) The violation or violations involved a construction project costing more than \$500,000.

Sec. 16. NAC 624.72512 is hereby amended to read as follows:

624.72512 In addition to any other factors that the Board uses to determine whether an administrative citation issued pursuant to NRS 624.341 should include an order for corrective action, the Board ~~{will}~~ *or its designee may* consider:

1. Whether compliance with such an order would result in excessive destruction or substantial waste to the existing construction on the construction project;

2. The willingness of the owner of the construction project to allow such corrective action;
~~{and}~~ *or*

3. A determination by the Executive Officer or his or her designee that the licensee is able to perform the corrective action.

Sec. 17. NAC 624.72514 is hereby amended to read as follows:

624.72514 In determining the time permitted for compliance with an order for corrective action ~~[as required to be stated in a written citation]~~ **issued** pursuant to NRS 624.341, the Board **or its designee** will determine the time for compliance with the order by considering, without limitation:

1. The accepted industry practice regarding the performance of the work necessary to comply with the order for corrective action, in the climate or weather conditions of the area in which the construction project is located.

2. The number of days during which the owner of the construction project will make the site of the construction project available for the contractor to comply with the order for corrective action.

3. The time necessary to obtain materials required for the contractor to comply with the order for corrective action.

Sec. 18. NAC 624.72518 is hereby amended to read as follows:

624.72518 If a licensee ~~[who]~~ is issued an administrative citation pursuant to NRS 624.341 ~~[which]~~ **that** includes an order for corrective action **and the cited licensee** hires and pays another licensee to perform the corrective action pursuant to subparagraph ~~[(3)]~~ **(2)** of paragraph (f) of subsection 1 of NRS 624.300, the cited licensee ~~[is]~~ **and the hired licensee are jointly** responsible for any failure of the hired licensee to comply with the order for corrective action included in the citation.

Sec. 19. NAC 624.7253 is hereby amended to read as follows:

624.7253 1. The provisions of NAC 624.6975 to 624.7296, inclusive, *and sections 2, 3 and 4 of this regulation*, govern practices in any contested case before the Board, and the Board *or its designee* will liberally construe those provisions to determine all matters before the Board *or its designee* in a just, speedy and economical manner.

2. The Board *or its designee* may allow a deviation from the provisions of NAC 624.6975 to 624.7296, inclusive, *and sections 2, 3 and 4 of this regulation*, if the Board *or its designee* determines that the deviation would not have a material adverse effect on the substantial interests of the parties and good cause for the deviation exists. If the Board *or its designee* allows such a deviation, it will include in the record the deviation and the reasons for the deviation.

Sec. 20. NAC 624.7256 is hereby amended to read as follows:

624.7256 1. The Board will:

(a) Set the date, time and place of a hearing for a contested case; and

(b) At least 21 days before the hearing, send a copy of the complaint and notice of hearing by certified mail, return receipt requested, to the respondent at the address on file with the Board, or by personal service in the manner provided in NRS *and the Nevada Rules of Civil Procedure* for service in civil actions. The complaint and notice of hearing may be included in the same document. A proof of service must be attached to the original of any document that is served by mail.

2. There is a rebuttable presumption that a complaint and notice of hearing has been received by a respondent ~~10~~ 7 days after the date the complaint and notice of hearing is deposited with the United States Postal System.

3. An objection that any notice required by NAC 624.6975 to 624.7296, inclusive, **and sections 2, 3 and 4 of this regulation**, was not provided in the manner set forth in those provisions will be deemed waived unless the objection is raised by the respondent before the introduction of any evidence into the record at a hearing of the Board.

Sec. 21. NAC 624.7259 is hereby amended to read as follows:

624.7259 1. The Executive Officer ~~{of the Board}~~ may add or dismiss a cause for disciplinary action against a respondent before the Board **or its designee** holds a hearing on that cause of action.

2. The Board or the Executive Officer ~~{of the Board}~~ may amend a complaint at any time. Notice of an amended complaint must be given in the same manner as a notice of an original complaint. The Board will grant a continuance if an amendment materially alters the complaint in such a way that the respondent will be unable to prepare ~~{his or her}~~ **the respondent's** case in a timely manner.

3. The Executive Officer ~~{of the Board}~~ may withdraw a complaint at any time before the Board holds a hearing on the complaint. After the hearing is commenced, only the Board may withdraw a complaint.

Sec. 22. NAC 624.7263 is hereby amended to read as follows:

624.7263 1. A respondent or ~~{his or her representative}~~ **a respondent's attorney** may request a continuance of a hearing upon a showing of good cause. A request for a continuance must be submitted to the Executive Officer ~~{of the Board}~~ in writing on a form prescribed by the Board. The request must be received by the Executive Officer at least ~~{10}~~ **14** days before the hearing.

2. A request for a continuance must specify the reasons constituting good cause for granting the continuance. A request for a continuance that is received less than ~~{10}~~ 14 days before the hearing must indicate that the request is the result of an emergency which arose less than ~~{10}~~ 14 days before the hearing.

3. The Executive Officer ~~{of the Board}~~ may grant a continuance before a hearing is held ~~{}~~ *if the request for a continuance is received more than 14 days before the hearing.* The Board *or its designee* may grant a continuance *if the request for a continuance is received not more than 14 days before the hearing. The Board or its designee may continue a hearing* at any time after the hearing is commenced.

Sec. 23. NAC 624.7266 is hereby amended to read as follows:

624.7266 **1.** All papers submitted to the Board by a party in a contested case must be typewritten on one side only, on white paper that is 8 1/2 by 11 inches in size. The first page of each document must include the names of the parties in the contested case and the number, if any, assigned to the case by the Board.

2. *All papers submitted to the Board must be submitted to the Executive Officer or as otherwise directed by the Board or its designee.*

3. *The parties to a contested matter may consent to electronic service and serve papers electronically in a manner agreed to by the parties.*

Sec. 24. NAC 624.7269 is hereby amended to read as follows:

624.7269 The *Executive Officer or the Board or its designee* may consolidate two or more contested cases if the *Executive Officer or the Board or its designee* determines that the issues are substantially similar and the interests of the parties will not be prejudiced by the

consolidation. The presiding officer of the hearing will determine the order of procedure at a consolidated hearing.

Sec. 25. NAC 624.7273 is hereby amended to read as follows:

624.7273 1. A party may only make those motions set out in subsection 2 of NRS 622A.360. A motion, unless made at a hearing, must be made in writing.

2. A written motion must set forth the nature of the relief requested and the grounds for the relief.

3. A party who wishes to oppose a motion must serve and file a written response to the motion not later than ~~10~~ **14** days after receiving the motion.

4. The moving party may serve and file a written reply only if an opposition to the motion has been served and filed.

5. The Board or its designee may issue a decision on a motion without oral argument.

6. If the Board or its designee wishes to oppose a motion, the Board or its designee is not required to serve or file a written response to the motion.

Sec. 26. NAC 624.7276 is hereby amended to read as follows:

624.7276 1. A party may apply to the Board for the issuance of a subpoena pursuant to NRS 624.170. An application for the issuance of a subpoena must:

(a) Be submitted in writing;

(b) Include a statement of the facts that demonstrate the reasons why the subpoena is necessary; ~~and~~

(c) ***Identify with reasonable particularity the document, identity of the witness or other evidence sought by the subpoena;***

(d) Include an address of where the document, witness or other evidence sought may be located or any other information necessary for sufficient service of process; and

(e) Be received by the Board at least ~~{10}~~ 14 days before the hearing for which the subpoena is issued.

2. The Board will issue a subpoena if the subpoena is reasonably calculated to lead to the presentation of admissible evidence in the contested case. An application for the issuance of a subpoena that does not meet the requirements of subsection 1 creates a rebuttable presumption that the subpoena is not reasonably calculated to lead to the presentation of admissible evidence. The presumption may be overcome if the party shows good cause for failing to meet the requirements of subsection 1. A hearing may not be continued solely for failure by a party to timely seek a subpoena or to serve a subpoena as required by this chapter or the Nevada Rules of Civil Procedure.

3. If the Board issues a subpoena, the party who requests the subpoena shall:

(a) Serve ~~{a copy of}~~ the subpoena ~~{on all other parties}~~ in the manner prescribed by Rule 45 of the Nevada Rules of Civil Procedure;

(b) ~~{File}~~ *Submit* proof of such service with the Board ~~{}~~ *before any evidence produced by the issuance of the subpoena is presented at the hearing;* and

(c) Pay the costs related to the issuance and service of the subpoena ~~{}~~ *including, without limitation, witness fees as provided by NRS 50.255.* The Board may require payment of ~~{the}~~ *its* costs before the issuance of the subpoena.

Sec. 27. NAC 624.7279 is hereby amended to read as follows:

624.7279 1. Any party who appears at a hearing may represent himself or herself or may be represented by an attorney licensed to practice law in this State.

2. Each person who appears at a hearing shall comply with the standards of ethical and courteous conduct required in the courts of this State. If a person fails to comply with those standards of conduct, the Board may:

(a) Exclude the person or ~~his or her~~ *the person's* representative from the hearing; or

(b) Terminate the hearing.

3. If a party is represented by an attorney, *upon reasonable demand* the Board will provide to the attorney any notice, document or other paper that the Board is required to provide to the party.

4. An attorney may withdraw from representing a party if the attorney provides written notice of his or her withdrawal to the Board and the party whom he or she represented.

5. The Board *or its designee* may refuse to consider any documentary evidence or exhibit presented by a party at a hearing if the evidence or exhibit was not *reasonably* provided to ~~the staff of the Board at least~~ *an opposing party. Documentary evidence provided 10 [calendar] or more* days before the date of the hearing *[+] is presumed to have been reasonably provided.*

Sec. 28. NAC 624.7283 is hereby amended to read as follows:

624.7283 1. The failure of a party to appear at a hearing shall be deemed a waiver of the party's right to present evidence *[+] at a hearing of the Board.* After presentation to the Board *or its designee* of an offer of proof that the absent party was given proper notice, and upon a determination by the Board *or its designee* that proper notice was given to the absent party, the

Board *or its designee* may hear evidence without the participation of the absent party and may make its decision based on ~~{such}~~ *the admitted* evidence.

2. The Board *or its designee* may limit the time each party is allowed to present evidence.

Sec. 29. NAC 624.7286 is hereby amended to read as follows:

624.7286 1. Except as otherwise provided in this section, a hearing in a contested case will be conducted in the following order:

- (a) The hearing will be called to order and the parties will be introduced on the record.
- (b) The complaint, notice of hearing, answer and the file of the Board that relates to the complaint may be placed in evidence.
- (c) Any preliminary motions or stipulations will be considered.
- (d) The Board or its attorney will present its case.
- (e) The respondent will present ~~{his or her}~~ *the respondent's* case.
- (f) If allowed by the Board ~~{}~~ *or its designee*, rebuttal evidence and closing arguments will be presented.
- (g) The Board *or its designee* may deliberate the case.

2. A member of the Board *or its designee* may question a witness at any time.

3. The Board *or its designee* may waive any provision of this section, including taking witnesses out of order, to expedite or ensure the fairness of the hearing.

Sec. 30. NAC 624.7289 is hereby amended to read as follows:

624.7289 1. A party may call any other party or witness as an adverse witness. The party may question such a witness as if conducting a cross-examination.

2. A party who is surprised by the testimony of a witness, called in good faith as a witness on ~~his or her~~ behalf ~~of~~ *of the party*, may question the witness as if conducting a cross-examination.

3. All testimony to be considered at a hearing must be taken under oath.

Sec. 31. NAC 624.7293 is hereby amended to read as follows:

624.7293 Except as otherwise provided by law:

1. A petition for a rehearing or reconsideration of a decision *and order* issued by the Board *or its designee* must be served on all parties not later than ~~15~~ *14* calendar days after the date of service of a copy of the decision ~~of~~ *and order*. The petition must state the specific grounds upon which relief is requested.

2. Any responses to a petition must be served not later than ~~15~~ *14* calendar days after the receipt of the petition.

3. If a respondent submits a petition for reconsideration of a decision issued by the Board ~~of~~ *or its designee*, the Board or its designee will review the petition to determine whether there is good cause for a reconsideration of the decision.

4. If a respondent submits a petition for a rehearing and wishes to present new evidence, the respondent must provide to the Board *or its designee* a statement setting forth the reasons for ~~his or her~~ *the respondent's* failure to introduce the new evidence at the previous hearing and a detailed description of the new evidence proposed to be introduced.

5. The Board or its designee will review a petition for a rehearing or reconsideration. A decision concerning the petition will be made not later than ~~15~~ *14* calendar days after the petition is filed with the Board. If a new hearing is ordered, the decision concerning the petition

will include the time, date and place of the hearing and the reasons for ordering a new hearing.

The *new* hearing will be conducted not later than 90 calendar days after the ~~{final}~~ decision ~~{of the Executive Officer.}~~ *granting a rehearing or reconsideration.*

6. The Board or its designee will provide notice of its order approving or denying the petition to all parties at least 5 days before the expiration of the period for filing a petition for judicial review.

7. If a rehearing is conducted, the Board *or its designee* may require the respondent to pay the costs of the rehearing.

Small Business Impact Statement
Proposed Regulations R014-19

1.0 Overview

The Nevada State Contractors Board (NSCB or Board) proposes revisions to the Administrative Code regarding the rules of practice before the Board. The revisions are the result of a three-year review of rules of practice regulations required by NRS 233B.050.

The Nevada State Contractors Board has determined that the proposed regulation revisions should not have an adverse economic impact upon a small business. The proposed regulation changes are not expected to negatively impact the formation, operation, or expansion of a small business in Nevada.

2.0 Authority

This small business impact statement is made pursuant to NRS 233B.0608 and complies with the requirements of NRS 233B.0609. As required by NRS 233B.0608(3), this statement identifies the methods used by the agency in determining the impact of the proposed regulation on a small business and provides the reasons for the conclusions of the agency followed by the certification by the person responsible for the agency.

3.0 Background

Nevada law permits the creation of regulations regarding rules of practice before an agency. NRS 233B.050(1). However, “each agency shall...(d) review its rules of practice at least once every 3 years.” *Id.* The Board’s rules of practice regulations are enrolled as NAC 624.6975 to NAC.7293. In the first quarter of calendar 2019, the Board began reviewing its rules of practice as required by statute. This review revealed several at-the-margin changes that could streamline and clarify practice before the Board.

After the 80th Legislative Session closed in 2019, further review of the rules of practice regulations was undertaken to confirm that the rules reflected revisions to Nevada law. As a result of this further review, additional revisions were recommended to reflect 2019’s statutory changes.

4.0 Method used to determine no small business impact

Pursuant to NRS 233B.0608, the Nevada State Contractors Board made a concerted effort to determine whether the proposed regulation changes were likely to: 1) impose a direct and significant economic burden upon a small business, or 2) directly restrict the formation, operation, or expansion of a small business. As a result of this effort, the NSCB determined that there is no impact upon small business as a result of the proposed regulation changes.

To reach this conclusion, the NSCB recognized that the rules of practice are rules of limited applicability because these rules concern the NSCB’s contested matters. Thus, any NRS Chapter 624 licensee seeking guidance from the rules of practice has been charged with statutory violations of the contracting statutes regarding contractor discipline. See NRS 624.300, et seq. (establishing contractor discipline). Of the limited pool of licensees that are affected by the rules

of practice, the clarifying and streamlining of the rules of practice is likely to reduce the economic burdens of a contested matter before the Board and to increase the consistency and predictability of contested matter processes. Thus, the NRS Chapter 624 licensees who find themselves in a contested matter before the NSCB are likely to see lower regulatory burdens as a result of the proposed changes.

No small business would endure any direct or significant economic burden related to the NSCB's proposed changes to its rules of practice. Instead, the clarification and streamlining of the rules of practice is more likely to reduce potential costs upon small business. Likewise, no small business was likely to be affected by revisions to the rules of practice in the small business's formation, operation, or expansion. Finally, clarification and streamlining of the rules of practice is likely to increase the public's trust in the Board's contested matter process thereby promoting business formation, operation, and expansion.

Ultimately, no adverse economic effects were identified because the proposed regulation changes clarify and streamline practice before the Board. Thus, the regulatory revisions are expected to immediately and continuously reduce overall costs of practice before the Board to licensees and the Board with no expected reduction in the protections for the public's health, safety, and welfare.

5.0 Certification by Person Responsible for the Agency

I, Margi Grein, Executive Officer of the Nevada State Contractors Board, certify to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and the information contained in this statement was prepared properly and is accurate.

Signature Margi Grein Date DECEMBER 11, 2019