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STATE CONTRACTORS BOARD

NOTICE OF INTENT TO ACT UPON A REGULATION

LCB File No. R030-21

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 Tuesday, November 9, 2021 at 1:00 p.m. and a public hearing on Tuesday, November 16, 2021 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 comply with the provisions of SB 303 which require the agency to adopt by regulation standards for advertisements concerning residential photovoltaic systems used to produce electricity.

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 Either the terms or the substance of the regulations to be adopted, amended or repealed or a description of the subjects and issues involved.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: (1) prohibits a contractor from engaging in deceptive advertising or "bait and switch" advertising regarding work concerning residential photovoltaic systems used to produce electricity; and (2) describes the acts which constitute such prohibited advertising. A copy of the proposed regulation may be obtained by visiting our website at www.nscb.nv.gov or writing to the Board's offices.

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.

The regulation should not result in any adverse economic effect.

(b) Both immediate and long-term effects.

There is no immediate or long term economic effect.

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 does not establish a new fee or increase an existing fee.

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. 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:

Nevada State Contractors Board – Reno Office
Nevada State Contractors Board – Henderson Office
Nevada State Contractors Board – Internet Website
Nevada Public Notice Website

Dated: October 13, 2021

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

LCB File No. R030-21

October 7, 2021

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

AUTHORITY: § 1, NRS 624.100 and section 10 of Senate Bill No. 303, chapter 227, Statutes of Nevada 2021, at page 1057.

A REGULATION relating to contractors; prohibiting certain contractors from engaging in certain deceptive practices relating to advertising; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

During the 2021 Legislative Session, the Nevada Legislature passed Senate Bill No. 303, which requires the State Contractors' Board to adopt by regulation standards for advertisements used by contractors in connection with the solicitation or sale of contracts for work concerning residential photovoltaic systems used to produce electricity. (Section 10 of Senate Bill No. 303, chapter 227, Statutes of Nevada 2021, at page 1057) In accordance with that requirement, this regulation: (1) prohibits a contractor from engaging in deceptive advertising or "bait and switch" advertising regarding work concerning residential photovoltaic systems used to produce electricity; and (2) describes the acts which constitute such prohibited advertising.

Section 1. Chapter 624 of NAC is hereby amended by adding thereto a new section to read as follows:

1. A contractor shall not engage in deceptive advertising or bait and switch advertising regarding work concerning a residential photovoltaic system used to generate electricity or the sale or lease of a residential photovoltaic system used to generate electricity.

2. A contractor engages in deceptive advertising if, when advertising work concerning a residential photovoltaic system used to generate electricity, the contractor knowingly:

- (a) Makes a false representation about work concerning a residential photovoltaic system used to generate electricity.*
- (b) Makes a false representation as to the source, sponsorship, approval or certification of work concerning a residential photovoltaic system used to generate electricity.*
- (c) Makes a false representation as to affiliation, connection, association with or certification by another person or entity.*
- (d) Represents that work concerning a residential photovoltaic system used to generate electricity is of a particular standard, quality or grade, or that goods related to such work are of a particular style or model, if the contractor knows or reasonably should know that the work or goods do not meet the advertised standard, quality, grade, style or model.*
- (e) Makes false or misleading statements of fact concerning the price of work concerning a residential photovoltaic system used to generate electricity or the reasons for, existence of or amounts of reductions in price.*
- (f) Makes any untrue statement of a material fact while advertising for work concerning a residential photovoltaic system used to generate electricity.*
- (g) Fails to disclose a material fact in connection with advertising for work concerning a residential photovoltaic system used to generate electricity.*
- (h) Disparages the goods, services or business of another provider of work concerning a residential photovoltaic system used to generate electricity by false or misleading representation of fact.*
- (i) Advertises work concerning a residential photovoltaic system used to generate electricity with the intent not to perform the work as advertised.*

(j) Advertises work concerning a residential photovoltaic system used to generate electricity with the intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity.

(k) Advertises that work concerning a residential photovoltaic system used to generate electricity can be completed within a certain number of days, unless, at the time the advertisement was made, more than half of the projects of work concerning residential photovoltaic systems used to generate electricity the contractor has completed were completed within the advertised number of days.

(l) As a part of an advertising plan or scheme, notifies a person that the person has won a prize and that as a condition of receiving the prize, the person must enter into a contract for work concerning a residential photovoltaic system used to generate electricity.

(m) Advertises for work concerning a residential photovoltaic system used to generate electricity:

(1) Using an illustration of a residential photovoltaic system used to generate electricity and setting forth a price that, at the time the advertisement was made, does not accurately reflect the completed residential photovoltaic system used to generate electricity as illustrated;
or

(2) Setting forth an offer for work concerning a residential photovoltaic system used to generate electricity that does not comply with the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and any federal regulations adopted pursuant thereto.

(n) Advertises that the use of a residential photovoltaic system used to generate electricity is free of charge for any period of time based on the payment of undisclosed costs as a condition of receiving the residential photovoltaic system used to generate electricity.

3. *As used in this section:*

(a) *“Advertising” means attempting by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation for work concerning a residential photovoltaic system used to generate electricity.*

(b) *“Bait and switch advertising” means an offer to sell or lease goods or provide services which, in truth, the seller, lessor or provider may not intend or desire to sell, lease or provide, accompanied by one or more of the following practices:*

(1) *Refusal to show any goods which are advertised.*

(2) *Disparagement in any material respect of the advertised goods or services or the terms of the sale, lease or contract.*

(3) *Requiring other sales or services or other undisclosed conditions to be met before selling, leasing or providing the advertised goods or services.*

(4) *Refusal to take orders for the sale, lease or provision of goods or services advertised for delivery within a reasonable time.*

(5) *Showing or demonstrating defective goods for sale or lease which are unusable or impractical for the purposes set forth in the advertisement.*

(6) *Accepting a deposit for the goods or services for sale, lease or provision and subsequently switching the purchase order, lease or contract to higher priced goods or services.*

(7) *Tendering a lease of goods advertised for sale or a sale of goods advertised for lease or tendering terms of sale or lease less favorable than the terms advertised.*

Small Business Impact Statement

Proposed Regulations R030-21

1.0 Overview

The Nevada State Contractors Board (NSCB) proposes an addition to the Administrative Code regarding the regulation of contractors in Nevada. The amendment creates, as required by SB303 (2021), a regulation preventing certain contractors from engaging in certain deceptive practices related to advertising.

The Nevada State Contractors Board has determined that the proposed regulation should not have an adverse financial impact upon a small business. The proposed regulation is 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

Senate Bill 303, enacted during the 2021 legislative session requires the Nevada State Contractors Board to adopt, by regulation, standards for advertisements used by contractors in connection with the solicitation or sale of contracts for work concerning residential photovoltaic systems. The proposed regulations simply support the provisions of Section 10 of Senate Bill 303 by establishing standards to prohibit deceptive advertising and ensure the advertisements are truthful and not materially misleading.

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 was 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.

To reach this conclusion, the NSCB considered the scope of the statutory change and narrowly tailored the proposed regulation to address the statutory mandate. After preparing the statutorily-mandated regulation, the NSCB recognized that no small business would endure any economic burden related to the NSCB's criteria for deceptive advertising related to residential solar photovoltaic systems. Indeed, by having a uniform set of expectations, no market participant can gain an unfair advantage via deceptive advertising. This is likely to increase the public's trust in the competency and integrity of the licensees thereby promoting business formation, operation, and expansion.

Ultimately, no adverse economic effects were identified because the proposed regulation does

not affect NRS Chapter 624 licensees or those who may seek to become a licensee. Instead, the regulation establishes standards for non-deceptive advertising so that the public's confidence and trust of the contracting industry as well as the public's health, safety, and welfare can be promoted.

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 10/13/2021