Building and Construction Trades Council of Northern Nevada

Chartered June 5, 1928
Affiliated with: Nevada State AFL-CIO
Building and Construction Trades Department, AFL-CIO

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Nevada Energy Director
Nevada State Office of Energy
755 N. Roop St. Suite 202
Carson City, NV 89701

November 20, 2013

Director,

As a follow up to October 28th letter on Proposed Regulation of the Director of the Office of Energy LCB File No. R065-13 and reviewing the November 14th revised regulation I am writing to again address the Council's concerns with language you are proposing in the regulation. Many of the proposed changes we see as little more than an attempt to undercut the Legislative intent of existing statute and each of these changes will adversely affect the working men and women who the provisions in statute we meant to benefit.

On pg. 1 in Sec 2. *1. **"Construction of the facility" means any activity that is:***

(a) Related to the improvement of real property for which a project is designed ; and

(b) Essential for the generation of renewable energy.

2. The term does not include:

(a) Field development or preparatory work, including without limitation, the installation of temporary fencing or exploratory wells, soil and pile testing, data system testing, surveying, grading and pad certifications;

Understanding the stated intent of defining a starting point for construction on a project I would offer some clarifying language which may assist while not infringing into actual construction as it is currently defined in other areas of the NRS.

2. The term does not include:
(a) Field development or preparatory work which will not be a part of the final project or utilized in the construction of the project, including without limitation the installation of temporary fencing for preconstruction work sites or exploratory wells, preconstruction soil and pile testing, data system testing, preconstruction surveying, preconstruction grading for exploration or preconstruction testing and pad certifications in association with exploration and preconstruction testing;

We proposed a modification to your proposes language because we understand there is a lot of preliminary work which goes into development of a project, but this is true of every construction project and the majority of the work you have proposed to exclude is included in every other type of construction project. To cut out portions of the project which are very much;

> ***Related to the improvement of real property for which a project is designed ; and***
> ***Essential for the generation of renewable energy.***

Does not seem reasonable to us temporary fencing, surveying, grading, soil and pile testing (during construction) and the pad certification are and always will be part of the construction. Under the language you have proposed a solar project would be essentially 50% completed before you would consider construction started. Under your proposed language all site development would be completed for all projects before you would consider construction to have started. It is clear this is an attempt to remove a major portion of all renewable energy projects from the requirements provided to qualify for abatements under NRS 701B, such action should be discussed at the Legislature, not implemented under regulation.

On pg. 17 in Sec 18

Sub 2. (a) To be a full-time employee working on ~~*(the)*~~ construction of the facility if the applicant establishes that the employee works or was regularly scheduled to work ~~*(40)*~~ ***an average of 35*** or more hours per week engaged in activity that furthers ~~*(the)*~~ construction of the facility.

I would recommend retaining the 40 hour language which exists in R094-10.

The argument presented at the workshop we attended that a full time DETER considers a worker to be a full time employee if he works an average of 35 hours per week is completely different than is regularly scheduled to work 35 hours per week, and I contend as I did at the workshop that construction workers are not full time employees if they are scheduled for less than 40 hours per week, usually is they aren't working 40 hours per week they are unemployed. To redefine full time employees without some type of Legislative direction is again an attempt to circumvent the Legislative intent of existing statute. Again – the existing language in R094-10 speaks to regularly scheduled not regularly works, which allows flexibility for scheduling or weather delays which you claim to be protecting the developer from.

On pg. 19 Sec 18

Sub 4 ~~(on a weekly basis and calculated for each week during the construction period as)~~ ***by dividing*** the total wages paid to all employees who performed construction work on the project ~~(for the week divided)~~ ***during the course of the construction period*** by the total number of hours worked by all employees who performed construction work on the project ~~(for that week,)~~ ***during the course of the construction period,*** excluding management and administrative employees.

I would recommend retaining existing weekly reporting language.

Revised language:

~~(as determined)~~ ***based on reports submitted*** on a weekly basis and calculated ~~(for each week)~~ during the construction period as the total wages paided to all employees who perform construction work on the project ~~(for the week)~~ ***during the construction period*** divided by the total number of hours worked by all employees who performed construction work on the project ~~(for that week)~~ ***during the construction period***

We fail to see where your argument that the existing reporting system creates an overwhelming paper work burden gives cause to the changes proposed. While the language in the November 14th revision reinstate the requirement for weekly reporting it retains language averaging the wages over the entire project. While the NRS appears to be silent on this – it is arguable that by not saying weekly or monthly or over entire project that it means at any time during the construction of the project the average wage of all workers on the project would be required to meet the requirement. In addition if you look to other places in the regulation where the adjustment of the average wage is

made by DETR and the wage is required to be adjusted on the job, this would indicate that the wages indeed must be averaged on a shorter time frame that over the entire project. (See Section 18, Sub 6 on page 20 of proposed regulation) As stated at the work shop, we see this as an opportunity for a project to be loaded up over a short term with higher paid workers to offset workers earlier in the project who may be paid a much lower than the average wage.

On pg. 19 Sec 18

Sub 5

the applicant must establish ***through certification by a third party, including without limitation, a provider of health care or provider of insurance, or through other documentation which is approved by the Director,*** that the ~~(cost of providing health insurance or a)~~ health insurance plan for and employee and the employee's dependents during the construction of the project includes,.....

Understanding the stated intent of the proposed language is to verify that benefits are being paid to a third party administrator as required in AB239, I would recommend the following language to clear up confusion.

the applicant must establish ***health insurance benefits are being provided by a third-party administrator through certification by the ~~a third party~~ administrator and submission of summary plan description, ~~including without limitation, a provider of healthcare of provider of insurance, or through other documentation which is approved by the Director,~~*** that the ~~(cost of providing health insurance or a)~~ ***which establishes that the*** health insurance plan for an employee and the employee's dependents during the construction of the project includes,.....

With this language the proposed language the proposed definitions of "provider of health care" and "provider of insurance" would not be needed. Any legitimate third party administrators who will provide the information described above at the request of the employer who is providing insurance through the third party administrator and only the third party administrator knows if the employer is current on his payments for the benefits provided.

I continue to question the validity of the verification process outlined in the proposed regulation. As we argued at the workshop, if the insurance in being provided through a third party administrator as outlined in AB239, that administrator is the source of information as to the validity of the insurance. They can provide who is providing the insurance, what the coverage is and who is covered. A Dr. may be able to tell you if the worker has insurance, but he can not tell you who is paying for that insurance, and he does not know what all is provided for under that insurance, only whether the procedure he is performing is covered.

On pg. 21 Sec 18

Sub 5(g) (For) ***Except as otherwise provided in this paragraph, for*** an in-network provider, a minimum employer contribution of at least 80 percent of medical expenses after the employee's deductible limit is met. ***The Director may approve a minimum employer contribution of less that 80 percent if an employer submits a written request stating reasonable grounds for such an exception.***

I still fail to see a need for this exemption and the provisions of NRS 701A or AB239 do not establish a need for this provision. I would recommend retaining existing language in this section of the regulation. The explanation of a small business which could not provide insurance at the level currently existing in regulation is an arbitrary argument. Any employer can claim they cannot afford insurance at this level – the point is if they are unwilling to provide the insurance as outlined in NRS and regulation then they don't need to seek work on the projects. These projects are supposed to provide a certain level of economic benefit back to Nevada and when Counties give their approval they are expecting those benefits – their evaluation is based on the wages and benefits which are outlined in statute and a reduction of health benefits will directly affect the Counties as they take the brunt of the burden for the uninsured and under insured.

Revision:

Sub 5(g) ~~(For)~~ ***Except as otherwise provided int his paragraph, for*** an in-network provider, a minimum employer contribution of at least ~~(80)~~ ***50*** percent of medical expenses after the employee's deductible is met.

Again I see nothing in AB 239 where the Legislature directed a modification in the level of insurance coverage. This would appear to be an attempt to reduce

the benefit to employees which the Legislature placed in 701B and I question whether the requirements as outlined in the revised regulation will even meet the requirements set forth in the Affordable Care Act, which would require the workers to buy additional insurance to be in compliance with that Act.

The provisions of the proposed regulation I have provided comment on here are only those which I was directly involved in the discussion of during the Legislative process in conjunction with changes made to NRS 701A by AB239 during the last session of the Legislature. My concerns with the regulatory language is based on my interest in the construction workers on these project receive the wages and benefits intended by the Legislature. I feel the issues I have pointed out here reduce those wages and benefits and also reduce the positive economic impact to the State which these incentives are supposed to bring.

I will be happy to continue to work with the Director and his staff to address these issues.

Sincerely

Paul McKenzie

Secretary Treasurer

Cc: Assemblywoman Marilyn Kirkpatrick
Assemblyman Jason Frierson
Senator Kelvin Atkinson
Senator Moises Denis
Senator Ben Kieckhefer
Senator Ruben J. Kihuen
Senator Michael Roberson
Senator James Settelmeyer
Assemblyman Skip Daly
Assemblyman Wesley Duncan
Assemblyman Ira Hansen
Assemblyman Lyn D. Stewart