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**DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER**

December 28, 2023

**ADVISORY OPINION—NEVADA ADMINISTRATIVE CODE § 607.650
SENATE BILL 82—REVISED APPRENTICESHIP UTILIZATION ACT (“AUA”) CODIFIED
IN NRS 338.01165**

Pursuant to Nevada Administrative Code (“NAC”) § 607.650, the Labor Commissioner is issuing the following Advisory Opinion regarding the passing of Senate Bill 82 (“SB 82”) from the 2023 82nd Nevada Legislative Session. SB 82 significantly amended the Apprenticeship Utilization Act (“AUA”) codified in Nevada Revised Statute 338.01165. The Labor Commissioner has received multiple inquiries, opinion requests, comments, suggestions, and proposals on how SB 82 should be interpreted, implemented, and enforced. The Labor Commissioner also met with various stakeholders.

This Advisory Opinion is intended to provide as much guidance as possible on SB 82. However, it must be recognized that not every working environment or situation may be encompassed by the answers and guidance set forth in this Advisory Opinion. The Labor Commissioner will attempt to interpret, implement, and enforce SB 82 based on the plain language of the bill and intent of the Legislative Sponsors of the bill to ensure that apprenticeship utilization takes place on Public Works Projects in the State of Nevada. Further, the Labor Commissioner will continue to work with stakeholders, public/awarding bodies, contractors/subcontractors, apprenticeship programs, local collective bargaining groups, employers, and employees on SB 82.

All interested members of the public, particularly those effected by SB 82, are **strongly advised** to read the entire text of SB 82. The full language of SB 82 as enrolled can be located at: [SB82 Text \(leg.state.nv.us\)](https://leg.state.nv.us/SB82Text)

Please Be Advised Senate Bill 82 is effective January 1, 2024.

Beginning in calendar year 2024, all hours worked on Public Works Projects by contractors of any tier must be reported to the Office of the Labor Commissioner (“the OLC”) no later than February 15, of the following year. As such, the first report will be due February 15, 2025, at 11:59 PM Pacific Standard Time. The Apprenticeship Utilization Act Report (“AUA Report”) must report apprentice hours worked to show compliance with SB 82, which requires contractors to employ apprentices for a minimum percentage of hours worked on all Public Works Projects in Nevada.

Under SB 82, as of January 1, 2024, apprentice hours per project will be irrelevant to the enforcement of, and compliance with, the Apprenticeship Utilization Act codified in NRS 338.01165. Any apprentice hours worked on a project that started prior to January 1, 2024, and continues into calendar year 2024, will not count towards the 2024 AUA Report unless those hours are worked in calendar year 2024. Awarding bodies may perform per project AUA compliance for Public Works Projects that began prior to calendar year 2024, but do not end until 2024, or beyond, however, the OLC would request the Awarding bodies not prioritize these claims.

Contractors and Subcontractors Compliance with Senate Bill 82

All contractors and subcontractors employing workers on Public Works Projects shall comply with the requirements of Senate Bill 82. Beginning January 1, 2024, contractors and subcontractors shall track hours of work performed on Public Works Projects by craft (classification of work performed) and employ apprentices for the required percentage of hours ascribed by type of construction (vertical or horizontal). Contractors and subcontractors are required to annually report these hours to the OLC no later than February 15 of the year following the reporting period. The first reporting year will be January 1, 2024 to December 31, 2024, with the 2024 AUA Report due to the OLC no later than February 15, 2025 at 11:59 PM Pacific Standard Time.

Senate Bill 82 Apprenticeship Utilization Act Report (“AUA Report”)

SB 82 amends NRS 338.01165 to require contractors and subcontractors of all tiers working on Public Works Projects to report the following information to the Office of the Labor Commissioner:

10. On or before February 15 of each year, a contractor or subcontractor engaged in vertical or horizontal construction, as applicable, who employs a worker on one or more public works pursuant to NRS 338.040 shall report to the Labor Commissioner, on the form prescribed by the Labor Commissioner, 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.

Therefore, beginning in 2025, between January 1 and February 15, contractors and subcontractors who worked on Public Works Projects shall compile an Apprenticeship Utilization Act Report (“AUA Report”) capturing all hours worked in all crafts on Public Works Projects in a calendar year and identifying the number and percentage of hours worked performed by apprentices compared to the total applicable hours worked by the Contractor or Subcontractor. The AUA Report form will be available on the OLC’s website as soon as possible, and this Advisory Opinion will be updated immediately upon its availability at labor.nv.gov.

Apprentice Utilization Compliance Requirements for SB 82 AUA Report

Beginning January 1, 2024, NRS 338.01165 will be amended to require:

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in vertical construction who employs *workers* on *one or more public works during a calendar year* pursuant to NRS 338.040 shall use one or more apprentices for at least 10 percent, *or any increased percentage established pursuant to subsection 3*, of the total hours of labor worked for each apprenticed craft or type of work to be performed on *those public works*.

2. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in horizontal construction who employs *workers* on *one or more public works during a calendar year* pursuant to NRS 338.040 shall use one or more apprentices for at least 3 percent, *or any increased percentage established pursuant to subsection 3*, of the total hours of labor worked for each apprenticed craft or type of work to be performed on *those public works*.

...

12(b) [The Labor Commissioner] Shall not assess a penalty if the total number of hours of labor required to be worked by apprentices:

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

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

As such, to comply with NRS 338.01165 and SB 82, contractors and subcontractors performing vertical construction pursuant to NRS 338.010(25) must employ apprentices for ten percent (10%) of the total hours worked on Public Works Projects if the Contractor or Subcontractor performs at least four hundred (400) hours of vertical construction in any craft on any Public Works Project in a calendar year. Contractors and subcontractors working on Public Works Projects performing horizontal construction pursuant to NRS 338.010(14) must employ apprentices for three percent (3%) of the total hours worked if the Contractor or Subcontractor performs at least eight hundred (800) horizontal construction hours in any craft in a calendar year. Contractors and subcontractors who perform work on one or more Public Works Projects in a calendar year, but do not perform at least four hundred (400) vertical hours or eight hundred (800) horizontal hours in any craft or type of work shall submit an AUA Report to the OLC indicating they worked insufficient hours to trigger the SB 82 requirements.

Requesting Apprentices to Work on Public Works Projects

To comply with SB 82, contractors and subcontractors will need to request apprentices directly from a Registered Apprenticeship Program (“RAP”) in the appropriate region for the applicable Public Works Project. Contractors and subcontractors requesting apprentices from a RAP should use the form from the Labor Commissioner’s website: [Request for Apprentice Availability on a Public Works Project](#). SB 82 and NRS 338.01165 address the process, requirements, and qualifications for requesting apprentices to comply with the AUA:

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

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

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

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

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

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

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

7(a) [A Contractor or Subcontractor] Makes a good faith effort to comply with [NRS 338.01165] if the contractor or subcontractor:

(1) Submits to the apprenticeship program, on the form prescribed by the Labor Commissioner, a request for an apprentice not earlier than 10 days before the contractor or subcontractor is scheduled to begin work on the public work and not later than 5 days after the contractor or subcontractor actually begins work on the public work.

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

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

Contractors and subcontractors are advised when performing work on Public Works Projects to check the Labor Commissioner's website at the AUA link: [Current Apprenticeship Programs](#), to identify whether a RAP exists for the region and craft the contractor will perform on the Public Works Project. Contractors and subcontractors must request an apprentice directly from the RAP not more than ten (10) days prior to and up to five (5) days after starting work on the Public Works Project. Further per SB 82, the Contractor or Subcontractor has a duty to request apprentices every thirty (30) days if they perform continuous work on the Public Works Project, and they were previously unable to employ an apprentice from a RAP in the region due to denial, unavailability, nonresponse, no-show, etc. Contractors performing a craft on a Public Works Project without an available RAP in the region should be prepared to report the unavailability of a RAP in the AUA Report.

Additional Documentation Required if Deficient in Apprentices Hours

If a Contractor or Subcontractor is unable to employ an apprentice due to denial, unavailability, nonresponse, no-show, and/or any other reason outside of the Contractor or Subcontractor's control, the Contractor or Subcontractor should preserve documentation of the unavailability. That documentation should be submitted to the OLC with the Contractor or Subcontractor's AUA Report in the event the Contractor or Subcontractor is deficient in apprentice hours for the year.

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

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

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

(1) Submits to the apprenticeship program, on the form prescribed by the Labor Commissioner, a request for an apprentice not earlier than 10 days before the contractor or subcontractor is scheduled to begin work on the public work and not later than 5 days after the contractor or subcontractor actually begins work on the public work.

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

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

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

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

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

In sum, documentation supporting deficient hours in an AUA Report includes all evidence justifying why the Contractor or Subcontractor was unable to employ an apprentice during the time period the Contractor or Subcontractor performed work for which a RAP exists in the region of the Public Works Project. If a Contractor or Subcontractor is unable to employ an apprentice due to the nonexistence of a RAP in the region of the Public Works Project, the Contractor or Subcontractor will notate the nonexistence of a RAP in the region on the AUA Report for those hours worked.

Penalties for Noncompliance with SB 82 and NRS 338.01165

SB 82 establishes a penalty scale for contractors and subcontractors noncompliant with the Apprenticeship Utilization Act:

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:

(1) 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.

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

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

(I) Two percent or more but less than 3 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 1 percent but less than 2 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.

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

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

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

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

...

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

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

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

In addition to the penalties codified by SB 82, NRS 338.015 and NRS 338.017 apply to violations of SB 82 and NRS 338.01165:

NRS 338.015 Enforcement by Labor Commissioner and Attorney General.

1. The Labor Commissioner shall enforce the provisions of [NRS 338.010](#) to [338.130](#), inclusive.

2. Except as otherwise provided in [NRS 338.035](#) and in addition to any other remedy or penalty provided in this chapter, if any person, including, without limitation, a public body, violates any provision of [NRS 338.010](#) to [338.130](#), inclusive, or any regulation adopted pursuant thereto, the Labor Commissioner may, after providing the person with notice and an opportunity for a hearing, impose against the person an administrative penalty of not more than \$5,000 for each such violation.

3. The Labor Commissioner may, by regulation, establish a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the person pursuant to this section.

4. The Labor Commissioner shall report the violation to the Attorney General, and the Attorney General may prosecute the person in accordance with law.

NRS 338.017 Temporary prohibition or disqualification of contractor from award of contract after imposition of administrative penalty or debarment by Federal Government; notification of State Contractors' Board.

1. If any administrative penalty is imposed pursuant to this chapter against a person for the commission of an offense, that person, and the corporate officers, if any, of that person, may not be awarded a contract for a public work:

(a) For the first offense, for a period of 3 years after the date of the imposition of the administrative penalty; and

(b) For the second or subsequent offense, for a period of 5 years after the date of the imposition of the administrative penalty.

2. A person, and the corporate officers, if any, of that person, who is identified in the System for Award Management Exclusions operated by the General Services Administration as being excluded from receiving contracts from the Federal Government pursuant to 48 C.F.R. §§ 9.400 et seq. as a result of being debarred may not be awarded a contract for a public work for the period of debarment of the contractor from receiving contracts from the Federal Government.

3. The Labor Commissioner, upon learning that a contractor has been excluded from receiving contracts from the Federal Government pursuant to 48 C.F.R. §§ 9.400 et seq. as a result of being debarred, shall disqualify the contractor from being awarded a contract for a public work as provided in subsection 2.

4. The Labor Commissioner shall notify the State Contractors' Board of each contractor who is prohibited or disqualified from being awarded a contract for a public work pursuant to this section.

...

As such, pursuant to SB 82 and NRS 338.01165, contractors and subcontractors shall perform the above reporting requirements for all hours worked on Public Works Projects annually beginning January 1, 2024. Between January 1, and February 15, contractors and subcontractors who worked on Public Works Projects shall compile an Apprenticeship Utilization Act Report (“AUA Report”) capturing all hours worked in all crafts on Public Works Projects in a calendar year and identifying the number and percentage of hours worked performed by apprentices from a RAP compared to the total applicable hours worked by the Contractor or Subcontractor. The AUA Report form will be available on the OLC’s website as soon as possible, and this Advisory Opinion will be updated immediately upon its availability at labor.nv.gov. Contractors and subcontractors who perform work on one or more Public Works Projects in a calendar year, but do not perform at least four hundred (400) vertical hours or eight hundred (800) horizontal hours in any craft or type of work shall submit an AUA Report to the OLC indicating they worked insufficient hours to trigger the SB 82 requirements.

Awarding/Public Bodies Compliance with Senate Bill 82

Effective January 1, 2024, Senate Bill 82 (“SB 82”) significantly amends the statutory responsibilities of Public Bodies (as defined in NRS 338.010(18) (“awarding bodies”)) sponsoring and awarding contracts for public works (as defined in NRS 338.010(19)) performing Apprenticeship Utilization Act compliance or regulation. SB 82 eliminates per project AUA compliance requirements. As such, awarding bodies are relieved of enforcing AUA compliance on contractors and subcontractors on a per project basis beginning January 1, 2024.

SB 82 tasks the Office of the Labor Commissioner with auditing the AUA Reports submitted by contractors and subcontractors, and identifying and initiating investigations for noncompliance by May 1, of the year the report is received. As such, the OLC requests Awarding bodies to supply the OLC with information upon request that identifies contractors and subcontractors by craft who performed work on the Awarding bodies’ Public Works Projects in the calendar year relevant to the AUA Reporting period. The OLC further encourages Awarding bodies to follow the procedure found in Nevada Administrative Code 338.107(2) in the event they become aware of a Contractor or Subcontractor of any tier who performed work on Public Works Project(s) in Nevada in any calendar year and failed to comply with SB 82 and NRS 338.01165.

Since SB 82 eliminates per project AUA requirements, it creates an overlap AUA compliance period for Public Works Projects starting before January 1, 2024, and ending in 2024, or beyond. Awarding bodies may perform per project AUA compliance for Public Works Projects that began prior to calendar year 2024, but do not end until 2024, or beyond, however, the OLC would request the Awarding bodies not prioritize these claims.

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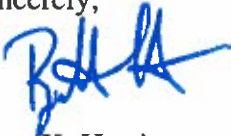
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Conclusion

In sum, contractors and subcontractors employing workers on Public Works Projects shall comply with the requirements of Senate Bill 82. Beginning January 1, 2024, contractors and subcontractors shall track hours of work performed on Public Works Projects by craft (classification of work performed) and employ apprentices for the required percentage of hours ascribed by type of construction (vertical or horizontal). Contractors and subcontractors are required to annually report these hours to the OLC no later than February 15, of the year following the reporting period. The first reporting year will be January 1, 2024 to December 31, 2024, with the AUA Reports due to the OLC no later than February 15, 2025 at 11:59 PM PST.

Please be advised that this Advisory Opinion is limited to the specific facts and circumstances described herein. The Office of the Labor Commissioner may revisit this issue through the Administrative Rulemaking Process. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretation of the statutes or rules upon which any opinion is based may require that this Advisory Opinion be modified or abandoned. All interested persons in need of additional information or clarification should not hesitate to contact our office at aua@labor.nv.gov or 702-486-2650. Thank you in advance for your attention to and compliance with SB 82, and we look forward to working with the industry to incorporate these changes to the Apprenticeship Utilization Act in Nevada.

Sincerely,



Brett K. Harris
Labor Commissioner