



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

March 28, 2024

Nelida Bernal
Construction Compliance Officer
Clark County Purchasing and Contracts
500 S. Grand Central Pkwy., 4th Floor
Box 551217
Las Vegas, NV 89155-1217

Re: Request for Advisory Opinion—Retroactive Application of SB 82 for Existing Contracts

Dear Ms. Bernal,

Pursuant to Nevada Administrative Code (“NAC”) Section 607.650, an Advisory Opinion has been requested clarifying whether Senate Bill 82 (“SB 82”) from the 82nd Session of the Nevada Legislature should be retroactively applied to contracts bid prior to the bill’s effective date of January 1, 2024. Specifically, your letter indicates Clark County Purchasing and Contracts has approximately 115 contracts that were entered into prior to January 1, 2024, under the version of NRS 338.01165 (“the AUA”) originally codified by Senate Bill 207 (“SB 207”) from the 80th Session of the Nevada Legislature. You further indicate your bid documents for these projects included instructions specific to SB 207 compliance, and project execution would require significant amendment involving the issuance of change orders and increased costs to the projects in order for contractors to instead comply with SB 82. As such, you request an Advisory Opinion on the Office of the Labor Commissioner’s overall stance regarding the retroactive application of SB 82 to Public Works Project contracts bid prior to January 1, 2024.

As set forth in NAC 607.650, this advisory opinion is limited to the facts and circumstances set forth in the request. This advisory opinion shall not apply to any pending administrative, civil, or criminal proceeding and shall not be relied upon by any party, whether a party at issue in the facts or not, in any future proceeding unrelated to the specific and unique facts and circumstances set forth in the request.

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I. SENATE BILL 82

All interested members of the public, particularly those affected by SB 82, are **strongly advised** to read the entire text of Senate Bill 82. The full language of SB 82 as enrolled can be located at: [SB82 Text \(state.nv.us\)](https://legis.nv.gov/legislation/assembly/bills/2024/sb82_text). Pursuant to SB 82, which went into effect January 1, 2024, beginning in calendar year 2024, all hours worked on Public Works Projects (“PWP”) 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 p.m. 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.

Since its passage in 2019, the AUA codified in NRS 338.01165 requires contractors employed on Nevada Public Works Projects (“PWP”) to employ apprentices for a percentage of total hours worked depending on project type to train the next skilled labor force. The OLC is tasked with enforcement of the AUA in conjunction with the Public Bodies awarding the PWP. Under SB 207, NRS 338.01165/AUA enforcement was triggered by complaint, and compliance requirements were audited by the Public Body that owns the PWP. As such a Complaint triggered a Public Body to perform an investigation and issue a Determination to be affirmed, modified, or denied by the OLC. Alternatively, a Public Body could initiate an investigation and issue a Determination to be affirmed, modified, or denied by the OLC. This resulted in approximately 125 AUA Complaints against contractors per year.

SB 82 amends NRS 338.01165 to require all 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, all 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 performed by apprentices compared to the total applicable hours worked by the Contractor or Subcontractor. The OLC estimates that if all contractors of any tier submit an AUA Report, the OLC is likely to receive 8,000-10,000 AUA Reports.

Notably, while the AUA Report must be submitted by all contractors, employing apprentices is only required by SB 82 when a contractor performs 400 hours of work or more on vertical PWP’s in a calendar year or 800 hours of work or more on horizontal PWP’s in a calendar year. If those numbers are reached in any apprenticeable classification of work, the contractor must employ apprentices for 10% of the total hours for all work performed on vertical PWP’s in a year and 3% for horizontal work. These percentage requirements are the same as SB 207, however, under SB 207, the percentages applied on a per project basis to contractors employing more than three (3) workers at a time on the project in any apprenticeable craft. As such, SB 207 excluded crews of three (3) or less in any apprenticeable craft from AUA compliance. SB 82 does not contain any explicit exemptions to the AUA for any contractor employing workers on PWP’s in a calendar year, regardless of anticipated crew size.

II. RETROACTIVE APPLICATION OF A STATUTE

Article 1 Section 15 of the Nevada Constitution states “No...law impairing the obligation of contracts shall ever be passed.” Furthermore, Nevada law generally presumes that newly enacted statutes apply prospectively unless the Legislature clearly indicates that they should apply retroactively or the Legislature’s intent cannot otherwise be met. *Valdez v. Emp’rs Ins. Co. of Nev.*, 123 Nev. 170, 179, 162 P.3d 148, 154 (2007). However, statutes that do not change substantive rights and instead relate solely to remedies and procedure can apply to any cases pending when enacted. *Id.* As such, a statute only applies retroactively in Nevada if either: (1) the Legislature intended for the statute to apply retroactively, or (2) the statute is procedural as opposed to substantive and applies to pending cases when enacted. *Salloum v. Boyd Gaming Corp.*, 137 Nev. 549, 495 P.3d 513 (2021).

III. THE APPLICATION OF SB82 TO PUBLIC WORKS PROJECT CONTRACTS

Here, SB 82 explicitly sets an effective date of January 1, 2024. As such, it can be assumed the Legislature intended the law to apply to contracts for Public Works Projects entered January 1, 2024, or later. For PWP’s executed prior to January 1, 2024, the Public Body may perform Apprenticeship Utilization Act Compliance pursuant to the requirements of SB 207.

However, all Contractors and Subcontractors of all tiers performing work on PWP’s in

calendar year 2024, or later are required by SB 82 to submit AUA Reports showing compliance with SB 82 with the caveat that the OLC shall evaluate hours performed under SB 207 against the compliance standards required by SB 207. Therefore, while the percentages of required apprentice hours are the same from SB 207 to SB 82, contractors will only be held accountable for employing apprentices for those hours if they were required to employ apprentices under SB 207.

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 modification or abandonment of this Advisory Opinion.

Thank you for reaching out to the Office of the Labor Commissioner with your questions. We appreciate the opportunity to provide information and education regarding Nevada labor laws, and their application. Should you need any additional clarification, please do not hesitate to contact our office at (702) 486-4650.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett K. Harris", written in a cursive style.

Brett K. Harris
Labor Commissioner