

House Bill 2838

Sponsored by Representative HOLVEY; Representatives BARNHART, BUCKLEY, DEMBROW, SHIELDS, WITT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits public agencies from entering into public works contracts for which contract price exceeds \$750,000 unless public agency verifies that every employer under contract is approved apprenticeship training agent unless local joint committee or apprenticeship training program does not exist in state.

Requires contractor and subcontractor that are parties to contract for which contract price exceeds \$750,000 to employ apprentices for at least 15 percent of total hours worked on project. Allows Bureau of Labor and Industries to adjust percentage in certain circumstances.

Requires Bureau of Labor and Industries to develop, adopt and revise plan to increase diversity among workers employed on public works projects, including workers who are apprentices.

Requires advisory committee to evaluate periodically minimum percentage set for number of hours to be worked by apprentices on public works projects and to assist Commissioner of Bureau of Labor and Industries in administration of Act.

Requires specifications and contracts for public works for which contract price exceeds \$750,000 to state that contractors and subcontractors must be approved training agents and that minimum percentage of total hours worked on public works project must be performed by apprentices.

Requires contractor or contractor's surety to provide certified statements concerning employment of apprentices on public works projects.

Provides for civil penalty of not more than \$5,000 per violation of provision of Act plus additional civil penalty in amount equal to \$20 multiplied by number of hours required to be worked, but not worked, by apprentices.

Directs moneys collected from additional civil penalty into State Apprenticeship and Training Education Fund and continuously appropriates moneys to State Apprenticeship and Training Council for specified purposes.

A BILL FOR AN ACT

1
2 Relating to apprenticeship; creating new provisions; amending ORS 279C.800, 279C.807, 279C.820,
3 279C.827, 279C.830, 279C.840, 279C.845, 279C.850 and 279C.865; and appropriating money.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 660.002 to**
6 **660.210.**

7 **SECTION 2. (1) Except as provided in subsection (2) of this section, a public agency may**
8 **not enter into a contract for public works, as defined in ORS 279C.800, for which the contract**
9 **price exceeds \$750,000 unless the public agency has verified that every employer under the**
10 **contract, including the contractor and any subcontractor, is an approved training agent that**
11 **is approved by a local joint committee under ORS 660.137.**

12 **(2) A public agency may enter into a contract described in subsection (1) of this section**
13 **even if an employer under the contract is not an approved training agent if the employer is**
14 **not an approved training agent because a local joint committee or program for the**
15 **apprenticeable occupations used by the employer does not exist in this state. This subsection**
16 **does not require an employer to start a local joint committee or become an approved training**
17 **agent if a committee or program does not exist in this state.**

18 **(3) If a local joint committee for an apprenticeable occupation used by an employer does**
19 **not exist in the county in which the employer is located, the State Director of Apprenticeship**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 and Training may extend the jurisdiction of a local joint committee in an adjoining county
 2 to the county in which the employer is located. The director's action is subject to ratification
 3 by the State Apprenticeship and Training Council.

4 **SECTION 3.** Section 4 of this 2009 Act is added to and made a part of ORS 279C.800 to
 5 279C.870.

6 **SECTION 4.** (1) A contractor or subcontractor that is a party to a contract for public
 7 works for which the contract price exceeds \$750,000 shall employ apprentices participating
 8 in programs of apprenticeship and training under ORS 660.002 to 660.210 for at least 15 per-
 9 cent of the total hours worked on the public works project by workers in apprenticeable oc-
 10 cupations. Either the contractor or the subcontractor may meet the requirement set forth
 11 in this subsection, except that the subcontractor shall independently meet the requirement
 12 in performing work on any subcontract for which the subcontract price exceeds \$750,000.

13 (2) If a contractor or subcontractor subject to subsection (1) of this section is unable at
 14 any time after the execution of the contract to meet the requirement set forth in subsection
 15 (1) of this section because too few apprentices are available to the contractor or subcon-
 16 tractor, the contractor shall notify the Commissioner of the Bureau of Labor and Industries
 17 and the public agency that awarded the contract for public works. In the notification the
 18 contractor shall document the contractor's or subcontractor's efforts to locate and employ
 19 suitable apprentices in sufficient detail to enable the commissioner to verify that the con-
 20 tractor or subcontractor is unable to meet the requirement set forth in subsection (1) of this
 21 section because too few apprentices are available to the contractor or subcontractor.

22 (3) If the commissioner verifies the information contained in the notification provided
 23 under subsection (2) of this section, the commissioner may adjust the minimum percentage
 24 required under subsection (1) of this section to reflect the number of apprentices available
 25 to the contractor or subcontractor for work on the affected public works contract. The
 26 parties to the contract may execute an amendment to the contract that reflects the adjusted
 27 minimum percentage.

28 (4) Every contractor or subcontractor engaged on a project for which there is a contract
 29 for public works shall post notices of the requirement set forth in subsection (1) of this
 30 section in conspicuous and accessible places in or about the project, preferably in the same
 31 places as the notice required under ORS 279C.840 (4). The notice shall describe the require-
 32 ment and shall contain information about how to report a violation of the requirement to the
 33 commissioner and where to obtain further information.

34 (5) Except as provided in subsections (2) and (3) of this section, a person may not take
 35 any action to circumvent the requirement set forth in subsection (1) of this section, includ-
 36 ing, but not limited to, structuring the work performed on a project so as to avoid employing
 37 workers in apprenticeable occupations.

38 **SECTION 5.** ORS 279C.800 is amended to read:

39 279C.800. As used in ORS 279C.800 to 279C.870, unless the context requires otherwise:

40 (1) "Apprentice" has the meaning given that term in ORS 660.010.

41 (2) "Apprenticeable occupation" has the meaning given that term in ORS 660.010.

42 (3) "Apprenticeship agreement" has the meaning given that term in ORS 660.010.

43 [(1)] (4) "Fringe benefits" means the amount of:

44 (a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or
 45 to a third person under a plan, fund or program; and

1 (b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in
 2 providing benefits to workers pursuant to an enforceable commitment to carry out a financially re-
 3 sponsible plan or program that is committed in writing to the workers affected, for medical or hos-
 4 pital care, pensions on retirement or death, compensation for injuries or illness resulting from
 5 occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life
 6 insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for
 7 defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits,
 8 but only when the contractor or subcontractor is not required by other federal, state or local law
 9 to provide any of these benefits.

10 [(2)] (5) "Housing" has the meaning given that term in ORS 456.055.

11 [(3)] (6) "Locality" means the following district in which the public works, or the major portion
 12 thereof, is to be performed:

- 13 (a) District 1, composed of Clatsop, Columbia and Tillamook Counties;
- 14 (b) District 2, composed of Clackamas, Multnomah and Washington Counties;
- 15 (c) District 3, composed of Marion, Polk and Yamhill Counties;
- 16 (d) District 4, composed of Benton, Lincoln and Linn Counties;
- 17 (e) District 5, composed of Lane County;
- 18 (f) District 6, composed of Douglas County;
- 19 (g) District 7, composed of Coos and Curry Counties;
- 20 (h) District 8, composed of Jackson and Josephine Counties;
- 21 (i) District 9, composed of Hood River, Sherman and Wasco Counties;
- 22 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;
- 23 (k) District 11, composed of Klamath and Lake Counties;
- 24 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
- 25 (m) District 13, composed of Baker, Union and Wallowa Counties; and
- 26 (n) District 14, composed of Harney and Malheur Counties.

27 [(4)] (7) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits,
 28 paid in the locality to the majority of workers employed on projects of similar character in the same
 29 trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

30 [(5)] (8) "Public agency" means the State of Oregon or any political subdivision thereof or any
 31 county, city, district, authority, public corporation or entity and any instrumentality thereof organ-
 32 ized and existing under law or charter.

33 [(6)(a)] (9)(a) "Public works" includes, but is not limited to:

34 (A) Roads, highways, buildings, structures and improvements of all types, the construction, re-
 35 construction, major renovation or painting of which is carried on or contracted for by any public
 36 agency to serve the public interest;

37 (B) A project for the construction, reconstruction, major renovation or painting of a privately
 38 owned road, highway, building, structure or improvement of any type that uses funds of a private
 39 entity and \$750,000 or more of funds of a public agency; or

40 (C) A project for the construction of a privately owned road, highway, building, structure or
 41 improvement of any type that uses funds of a private entity and in which 25 percent or more of the
 42 square footage of the completed project will be occupied or used by a public agency.

43 (b) "Public works" does not include:

44 (A) The reconstruction or renovation of privately owned property that is leased by a public
 45 agency; or

1 (B) The renovation of publicly owned real property that is more than 75 years old by a private
 2 nonprofit entity if:

3 (i) The real property is leased to the private nonprofit entity for more than 25 years;

4 (ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost
 5 of the renovation; and

6 (iii) Contracts for the renovation were advertised or, if not advertised, were entered into before
 7 July 1, 2003, but the renovation has not been completed on or before July 13, 2007.

8 **SECTION 6.** ORS 279C.807 is amended to read:

9 279C.807. (1) The Bureau of Labor and Industries shall develop, [and] adopt **and revise as**
 10 **necessary** a plan to increase diversity statewide among workers employed on projects subject to
 11 ORS 279C.800 to 279C.870, **including workers who are apprentices participating in programs**
 12 **of apprenticeship and training under ORS 660.002 to 660.210.** The bureau shall develop the plan
 13 after conducting a statewide public process to solicit proposals to increase diversity and shall adopt
 14 the plan after considering proposals submitted to the bureau.

15 (2) The bureau shall report each year to the Legislative Assembly or to the appropriate legis-
 16 lative interim committee concerning progress that results from the plan adopted under this section
 17 and may submit recommendations for legislation or other measures that will improve diversity
 18 among workers employed on projects subject to ORS 279C.800 to 279C.870, **including workers who**
 19 **are apprentices participating in a program of apprenticeship and training under ORS 660.002**
 20 **to 660.210.** The bureau shall submit the first report no later than January 1, 2009.

21 **SECTION 7.** ORS 279C.820 is amended to read:

22 279C.820. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory
 23 committee to assist the commissioner in the administration of ORS 279C.800 to 279C.870.

24 (2) The advisory committee must include equal representation of members from management and
 25 labor in the building and construction industry who perform work on public works contracts and
 26 such other interested parties as the commissioner shall appoint.

27 (3) **The advisory committee, at least once each year, shall evaluate the minimum per-**
 28 **centage set forth in section 4 of this 2009 Act and make recommendations to the commis-**
 29 **sioner concerning needed adjustments in the minimum percentage. The advisory committee**
 30 **shall base the recommendations on actual or projected increases or decreases in the avail-**
 31 **ability of apprentices in apprenticeable occupations used by employers in public works**
 32 **projects.**

33 (4) **The advisory committee shall consult with the State Apprenticeship and Training**
 34 **Council when necessary to:**

35 (a) **Determine the current and projected availability of apprentices in apprenticeable oc-**
 36 **cupations used by employers in public works projects; and**

37 (b) **Make recommendations to the commissioner or otherwise assist the commissioner in**
 38 **the administration of the provisions of ORS 279C.800 to 279C.870 related to apprenticeship**
 39 **requirements in public works contracts.**

40 **SECTION 8.** ORS 279C.827 is amended to read:

41 279C.827. (1)(a) A public agency may not divide a public works project into more than one con-
 42 tract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

43 (b) When the Commissioner of the Bureau of Labor and Industries determines that a public
 44 agency has divided a public works project into more than one contract for the purpose of avoiding
 45 compliance with ORS 279C.800 to 279C.870, the commissioner shall issue an order compelling com-

1 pliance.

2 (c) In making determinations under this subsection, the commissioner shall consider:

3 (A) The physical separation of the project structures;

4 (B) The timing of the work on project phases or structures;

5 (C) The continuity of project contractors and subcontractors working on project parts or phases;

6 (D) The manner in which the public agency and the contractors administer and implement the
7 project;

8 (E) Whether a single public works project includes several types of improvements or structures;
9 and

10 (F) Whether the combined improvements or structures have an overall purpose or function.

11 (2) If a project is a public works of the type described in ORS 279C.800 [(6)(a)(B) or (C)] **(9)(a)(B)**
12 **or (C)**, the commissioner shall divide the project, if appropriate, after applying the considerations
13 set forth in subsection (1)(c) of this section to separate the parts of the project that include funds
14 of a public agency or that will be occupied or used by a public agency from the parts of the project
15 that do not include funds of a public agency and that will not be occupied or used by a public
16 agency. If the commissioner divides the project, any part of the project that does not include funds
17 of a public agency and that will not be occupied or used by a public agency is not subject to ORS
18 279C.800 to 279C.870.

19 (3) If a project includes parts that are owned by a public agency and parts that are owned by
20 a private entity, the commissioner shall divide the project, if appropriate, after applying the con-
21 siderations set forth in subsections (1)(c) and (2) of this section to separate the parts of the project
22 that are public works from the parts of the project that are not public works. If the commissioner
23 divides the project, parts of the project that are not public works are not subject to ORS 279C.800
24 to 279C.870.

25 **SECTION 9.** ORS 279C.830 is amended to read:

26 279C.830. (1)(a) Except as provided in paragraph (d) of this subsection, the specifications for
27 every contract for public works shall contain a provision stating the existing state prevailing rate
28 of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act
29 (40 U.S.C. 3141 et seq.) that may be paid to workers in each trade or occupation required for the
30 public works employed in the performance of the contract either by the contractor or subcontractor
31 or other person doing or contracting to do the whole or any part of the work contemplated by the
32 contract. When the prevailing rates of wage are available electronically or are accessible on the
33 Internet, the rates may be incorporated into the specifications by referring to the electronically
34 accessible or Internet-accessible rates and by providing adequate information about how to access
35 the rates.

36 (b) If a public agency is required under paragraph (a) of this subsection to include the state and
37 federal prevailing rates of wage in the specifications, the public agency also shall include in the
38 specifications information showing which prevailing rate of wage is higher for workers in each trade
39 or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and In-
40 dustries under ORS 279C.815 (2)(c).

41 (c) Every contract and subcontract shall contain a provision that the workers shall be paid not
42 less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

43 (d) A public works project described in ORS 279C.800 [(6)(a)(B) or (C)] **(9)(a)(B) or (C)** is subject
44 to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage
45 required under the Davis-Bacon Act that is in effect at the time a public agency enters into an

1 agreement with a private entity for the project. After that time, the specifications for any contract
 2 for the public works shall include the applicable prevailing rate of wage.

3 (2) The specifications for every contract for public works between a public agency and a con-
 4 tractor shall contain a provision stating that a fee is required to be paid to the Commissioner of the
 5 Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a pro-
 6 vision that the fee shall be paid to the commissioner under the administrative rule of the commis-
 7 sioner.

8 (3) The specifications for every contract for public works shall contain a provision stating that
 9 the contractor and every subcontractor must have a public works bond filed with the Construction
 10 Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7),
 11 (8) or (9). Every contract awarded by a contracting agency shall contain a provision requiring the
 12 contractor:

13 (a) To have a public works bond filed with the Construction Contractors Board before starting
 14 work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

15 (b) To include in every subcontract a provision requiring the subcontractor to have a public
 16 works bond filed with the Construction Contractors Board before starting work on the project, un-
 17 less exempt under ORS 279C.836 (4), (7), (8) or (9).

18 **(4)(a) The specifications for every contract for public works for which the contract price**
 19 **exceeds \$750,000 shall contain a provision stating that the contractor and every subcontrac-**
 20 **tor must be an approved training agent that is approved by a local joint committee under**
 21 **ORS 660.137, if a committee or program of apprenticeship and training for the apprenticeable**
 22 **occupations used by the contractor or subcontractor exists in this state.**

23 **(b) For a contract between a public agency and a contractor for which the contract price**
 24 **exceeds \$750,000, the specifications required by paragraph (a) of this subsection also shall**
 25 **contain a provision stating the minimum percentage of the total hours worked on the public**
 26 **works project by workers in apprenticeable occupations that must be performed by appren-**
 27 **tices participating in programs of apprenticeship and training under ORS 660.002 to 660.210.**
 28 **The minimum percentage set forth in the specifications may not be less than the minimum**
 29 **percentage set forth in section 4 of this 2009 Act. The workers may be employed by the**
 30 **contractor or any subcontractor on the public works project, except that a subcontractor**
 31 **shall independently meet the minimum percentage requirement in performing work on any**
 32 **subcontract for which the subcontract price exceeds \$750,000.**

33 **(c) A contract or subcontract for public works for which the contract price exceeds**
 34 **\$750,000 shall contain a provision stating that the contractor and every subcontractor must**
 35 **be an approved training agent that is approved by a local joint committee under ORS 660.137,**
 36 **if a committee or program of apprenticeship and training for the apprenticeable occupations**
 37 **used by the contractor or subcontractor exists in this state.**

38 **(d) A contract described in paragraph (c) of this subsection between a public agency and**
 39 **a contractor and any subcontract between a contractor and a subcontractor for which the**
 40 **subcontract price exceeds \$750,000 also shall contain a provision stating the minimum per-**
 41 **centage of the total hours worked on the public works project by workers in apprenticeable**
 42 **occupations that must be performed by apprentices participating in programs of apprentice-**
 43 **ship and training under ORS 660.002 to 660.210. The minimum percentage set forth in the**
 44 **contract or subcontract may not be less than the minimum percentage set forth in section**
 45 **4 of this 2009 Act. The apprentices may be employed by the contractor or any subcontractor**

1 **on the public works project, except that a subcontractor shall independently meet the mini-**
 2 **imum percentage requirement in performing work on any subcontract for which the subcon-**
 3 **tract price exceeds \$750,000.**

4 **SECTION 10.** ORS 279C.840 is amended to read:

5 279C.840. (1) The hourly rate of wage to be paid by any contractor or subcontractor to workers
 6 upon all public works shall be not less than the prevailing rate of wage for an hour's work in the
 7 same trade or occupation in the locality where the labor is performed. The obligation of a contractor
 8 or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in
 9 cash, by the making of contributions of a type referred to in ORS 279C.800 [(1)(a)] **(4)(a)**, or by the
 10 assumption of an enforceable commitment to bear the costs of a plan or program of a type referred
 11 to in ORS 279C.800 [(1)(b)] **(4)(b)**, or any combination thereof, where the aggregate of any such
 12 payments, contributions and costs is not less than the prevailing rate of wage.

13 (2) After a contract for public works is executed with any contractor or work is commenced
 14 upon any public works, the amount of the prevailing rate of wage is not subject to attack in any
 15 legal proceeding by any contractor or subcontractor in connection with that contract.

16 (3) It is not a defense in any legal proceeding that the prevailing rate of wage is less than the
 17 amount required to be in the specifications of a contract for public works, or that there was an
 18 agreement between the employee and the employer to work at less than the wage rates required to
 19 be paid under this section.

20 (4) Every contractor or subcontractor engaged on a project for which there is a contract for a
 21 public works shall keep the prevailing rates of wage for that project posted in a conspicuous and
 22 accessible place in or about the project. The Commissioner of the Bureau of Labor and Industries
 23 shall furnish without charge copies of the prevailing rates of wage to contractors and subcontrac-
 24 tors.

25 (5) Every contractor or subcontractor engaged on a project for which there is a contract for a
 26 public works to which the prevailing wage requirements apply that also provides or contributes to
 27 a health and welfare plan or a pension plan, or both, for the contractor or subcontractor's employees
 28 on the project shall post a notice describing the plan in a conspicuous and accessible place in or
 29 about the project. The notice preferably shall be posted in the same place as the notice required
 30 under subsection (4) of this section. In addition to the description of the plan, the notice shall con-
 31 tain information on how and where to make claims and where to obtain further information.

32 (6)(a) Except as provided in paragraph (c) of this subsection, no person other than the contractor
 33 or subcontractor may pay or contribute any portion of the prevailing rate of wage paid by the
 34 contractor or subcontractor to workers employed in the performance of a public works contract.

35 (b) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate of wage
 36 specified in the contract.

37 (c) This subsection is not intended to prohibit payments to a worker who is enrolled in any
 38 government-subsidized training or retraining program.

39 (7) A person may not take any action that circumvents the payment of the prevailing rate of
 40 wage to workers employed on a public works contract, including, but not limited to, reducing an
 41 employee's regular rate of pay on any project not subject to ORS 279C.800 to 279C.870 in a manner
 42 that has the effect of offsetting the prevailing rate of wage on a public works project.

43 **SECTION 11.** ORS 279C.845 is amended to read:

44 279C.845. (1) The contractor or the contractor's surety and every subcontractor or the subcon-
 45 tractor's surety shall file certified statements with the public agency in writing, on a form pre-

1 scribed by the Commissioner of the Bureau of Labor and Industries, certifying:

2 (a) The hourly rate of wage paid each worker whom the contractor or the subcontractor has
 3 employed upon the public works; and

4 (b) That no worker employed upon the public works has been paid less than the prevailing rate
 5 of wage or less than the minimum hourly rate of wage specified in the contract.

6 (2) The certified statement shall be verified by the oath of the contractor or the contractor's
 7 surety or subcontractor or the subcontractor's surety that the contractor or subcontractor has read
 8 the certified statement and knows the contents thereof and that the same is true to the contractor
 9 or subcontractor's knowledge.

10 (3) The certified statements shall set out accurately and completely the payroll records for the
 11 prior week, including the name and address of each worker, the worker's correct classification, **the**
 12 **worker's apprenticeship agreement registration number, if any**, rate of pay, daily and weekly
 13 number of hours worked, deductions made and actual wages paid.

14 **(4) In addition to the certified statements required by subsection (1) of this section, the**
 15 **contractor or the contractor's surety and every subcontractor or the subcontractor's surety**
 16 **shall file certified apprenticeship utilization statements with the public agency, in writing**
 17 **and on a form prescribed by the commissioner, that show the weekly cumulative total of**
 18 **hours worked on the public works project by apprentices participating in programs of ap-**
 19 **prenticeship and training under ORS 660.002 to 660.210. The statements required by this**
 20 **subsection shall be verified as provided in subsection (2) of this section.**

21 [(4)] (5) The contractor or subcontractor shall deliver or mail each certified statement required
 22 by [subsection (1)] **subsections (1) and (4)** of this section to the public agency. Certified statements
 23 for each week during which the contractor or subcontractor employs a worker upon the public
 24 works shall be submitted once a month, by the fifth business day of the following month. Information
 25 submitted on certified statements may be used only to ensure compliance with the provisions of ORS
 26 279C.800 to 279C.870.

27 [(5)] (6) Each contractor or subcontractor shall preserve the certified statements for a period
 28 of three years from the date of completion of the contract.

29 [(6)] (7) Certified statements received by a public agency are public records subject to the pro-
 30 visions of ORS 192.410 to 192.505.

31 [(7)] (8) Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor is required to file certi-
 32 fied statements under this section, the public agency shall retain 25 percent of any amount earned
 33 by the contractor on the public works until the contractor has filed with the public agency certified
 34 statements as required by this section. The public agency shall pay the contractor the amount re-
 35 tained under this subsection within 14 days after the contractor files the certified statements as
 36 required by this section, regardless of whether a subcontractor has failed to file certified statements
 37 as required by this section. The public agency is not required to verify the truth of the contents of
 38 certified statements filed by the contractor under this section.

39 [(8)] (9) Notwithstanding ORS 279C.555, the contractor shall retain 25 percent of any amount
 40 earned by a first-tier subcontractor on a public works until the subcontractor has filed with the
 41 public agency certified statements as required by this section. The contractor shall verify that the
 42 first-tier subcontractor has filed the certified statements before the contractor may pay the subcon-
 43 tractor any amount retained under this subsection. The contractor shall pay the first-tier subcon-
 44 tractor the amount retained under this subsection within 14 days after the subcontractor files the
 45 certified statements as required by this section. Neither the public agency nor the contractor is re-

1 required to verify the truth of the contents of certified statements filed by a first-tier subcontractor
 2 under this section.

3 **(10) For purposes of this section, “certified statement” includes the certified statements**
 4 **described in subsection (1) of this section and the certified apprenticeship utilization state-**
 5 **ments described in subsection (4) of this section.**

6 **SECTION 12.** ORS 279C.850 is amended to read:

7 279C.850. (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries
 8 may enter the office or business establishment of any contractor or subcontractor performing public
 9 works and gather facts and information necessary to determine whether the [*prevailing rate of wage*
 10 *is actually being paid by such contractor or subcontractor to workers upon public works.*] **contractor**
 11 **or subcontractor is:**

12 **(a) Actually paying the prevailing rate of wage to workers upon public works; and**

13 **(b) Meeting the requirement set forth in section 4 of this 2009 Act.**

14 (2) Upon request by the commissioner, every contractor or subcontractor performing work on
 15 public works shall make available to the commissioner for inspection during normal business hours
 16 any payroll or other records in the possession or under the control of the contractor or subcon-
 17 tractor that are deemed necessary by the commissioner to determine whether the prevailing rate
 18 of wage is actually being paid by such contractor or subcontractor to workers upon public works
 19 **and whether the contractor or subcontractor is meeting the requirement set forth in section**
 20 **4 of this 2009 Act.** The commissioner’s request must be made a reasonable time in advance of the
 21 inspection.

22 (3) Notwithstanding ORS 192.410 to 192.505, any record obtained or made by the commissioner
 23 under this section is not open to inspection by the public.

24 (4) The commissioner may, without necessity of an assignment, initiate legal proceedings against
 25 employers to enjoin future failures to pay required prevailing rates of wage or overtime pay and to
 26 require the payment of prevailing rates of wage or overtime pay due employees. The commissioner
 27 is entitled to recover, in addition to other costs, such sum as the court or judge may determine
 28 reasonable as attorney fees. If the commissioner does not prevail in the action, the commissioner
 29 shall pay all costs and disbursements from the Bureau of Labor and Industries Account.

30 **SECTION 13.** ORS 279C.865 is amended to read:

31 279C.865. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau
 32 of Labor and Industries may assess a civil penalty not to exceed \$5,000 for each violation of any
 33 provision of ORS 279C.800 to 279C.870 or any rule of the commissioner adopted thereunder.

34 **(2) In addition to any penalty assessed under subsection (1) of this section, the commis-**
 35 **sioner may assess a civil penalty for violation of the requirement set forth in section 4 of this**
 36 **2009 Act in an amount equal to \$20 multiplied by the number of hours required under section**
 37 **4 of this 2009 Act to be performed by apprentices participating in programs of apprenticeship**
 38 **and training under ORS 660.002 to 660.210, less an amount equal to \$20 multiplied by the**
 39 **number of hours actually performed by such apprentices.**

40 [(2)] (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

41 [(3)] (4) All moneys collected as penalties under **subsection (1) of** this section shall be first
 42 applied toward reimbursement of costs incurred in determining violations, conducting hearings and
 43 assessing and collecting the penalties. The remainder, if any, of moneys collected as penalties under
 44 **subsection (1) of** this section shall be paid into the State Treasury and credited to the General
 45 Fund and are available for general governmental expenses.

1 **(5) All moneys collected as penalties under subsection (2) of this section shall be paid into**
2 **the State Treasury and the State Treasurer shall deposit the moneys into a State Appren-**
3 **ticeship and Training Education Fund. Interest earned by the fund shall be credited to the**
4 **fund. The moneys in the State Apprenticeship and Training Education Fund are continuously**
5 **appropriated to the State Apprenticeship and Training Council for the purpose of:**

6 **(a) Making grants on a competitive basis, in consultation with the Department of Edu-**
7 **cation and in conformance with a plan adopted under ORS 279C.807, to programs that directly**
8 **provide career technical education for occupations prevalent in the construction and manu-**
9 **facturing industries; and**

10 **(b) Overseeing and monitoring apprenticeship and training programs, including programs**
11 **identified in paragraph (a) of this subsection, for compliance with applicable rules, standards**
12 **and laws.**

13 **(6) The State Apprenticeship and Training Council may make grants from the State Ap-**
14 **prenticeship and Training Education Fund described in subsection (5) of this section to:**

15 **(a) Apprenticeship and training programs, direct entry programs and preapprenticeship**
16 **and youth apprenticeship programs that are registered with the council;**

17 **(b) Public school districts and education service districts; or**

18 **(c) Public post-secondary educational institutions.**

19 **SECTION 14. Sections 2 and 4 of this 2009 Act and the amendments to ORS 279C.800,**
20 **279C.807, 279C.820, 279C.827, 279C.830, 279C.840, 279C.845, 279C.850 and 279C.865 by sections 5**
21 **to 13 of this 2009 Act apply to public works contracts first advertised or, if not advertised,**
22 **first entered into on or after the effective date of this 2009 Act.**

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