

# D R A F T

## SUMMARY

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. Provides exception if local joint committee or apprenticeship training program does not exist in this state.

Requires contractors and subcontractors that are parties to contract for which contract price exceeds \$750,000 to employ apprentices for specified minimum percentage of total hours worked on project by workers in apprenticeable occupations. Allows Bureau of Labor and Industries to adjust percentage in certain circumstances.

Requires bureau 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 prevailing wage provisions related to apprenticeship requirements.

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

Reduces civil penalty for violation of prevailing wage provisions. Creates additional civil penalty in amount equal to \$20 multiplied by number of hours required to be worked, but not worked, by apprentices.

Establishes State Apprenticeship Training and Education Fund. Directs State Treasurer to deposit moneys collected from additional civil penalty into State Apprenticeship Training and Education Fund. Continuously appropriates moneys in fund 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,

3 279C.807, 279C.820, 279C.827, 279C.830, 279C.840, 279C.845, 279C.850 and

**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 279C.865; and appropriating money.

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

3 **SECTION 1. Section 2 of this 2013 Act is added to and made a part**  
4 **of ORS 660.002 to 660.210.**

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

11 **(2) A public agency may enter into a contract described in sub-**  
12 **section (1) of this section even if an employer under the contract is**  
13 **not an approved training agent if the employer is not an approved**  
14 **training agent because a local joint committee or program for the**  
15 **apprenticeable occupations that the employer uses does not exist in**  
16 **this state.**

17 **(3) If a local joint committee for an apprenticeable occupation that**  
18 **an employer uses does not exist in the county in which the employer**  
19 **is located, the State Director of Apprenticeship and Training may ex-**  
20 **tend the jurisdiction of a local joint committee in an adjoining county**  
21 **to the county in which the employer is located. The director's action**  
22 **is subject to ratification by the State Apprenticeship and Training**  
23 **Council.**

24 **SECTION 3. ORS 279C.807 and section 4 of this 2013 Act are added**  
25 **to and made a part of ORS 279C.800 to 279C.870.**

26 **SECTION 4. (1) A contractor or subcontractor that is a party to a**  
27 **contract for public works for which the contract price exceeds \$750,000**  
28 **shall employ apprentices that are participating in programs of ap-**  
29 **prenticeship and training under ORS 660.002 to 660.210 for at least 10**  
30 **percent of the total hours worked on the public works project by**  
31 **workers in apprenticeable occupations. Either the contractor or the**

1 subcontractor may meet the requirement set forth in this subsection,  
2 except that the subcontractor shall independently meet the require-  
3 ment in performing work on a subcontract for which the subcontract  
4 price exceeds \$750,000.

5 (2) If a contractor or subcontractor that is subject to subsection (1)  
6 of this section is unable, at any time after executing the contract, to  
7 meet the requirement set forth in subsection (1) of this section be-  
8 cause too few apprentices are available to the contractor or subcon-  
9 tractor, the contractor shall notify the Commissioner of the Bureau  
10 of Labor and Industries and the public agency that awarded the con-  
11 tract for public works. In the notification the contractor shall docu-  
12 ment the contractor's or subcontractor's efforts to locate and employ  
13 suitable apprentices in sufficient detail to enable the commissioner to  
14 verify that the contractor or subcontractor is unable to meet the re-  
15 quirement set forth in subsection (1) of this section because too few  
16 apprentices are available to the contractor or subcontractor.

17 (3) If the commissioner verifies the information in the notification,  
18 the commissioner may adjust the minimum percentage required under  
19 subsection (1) of this section to reflect the number of apprentices that  
20 are available to the contractor or subcontractor for work on the af-  
21 fected public works contract. The parties to the contract may execute  
22 an amendment to the contract that reflects the adjusted minimum  
23 percentage.

24 (4) Every contractor or subcontractor engaged on a project for  
25 which there is a contract for public works shall post notices of the  
26 requirement set forth in subsection (1) of this section in conspicuous  
27 and accessible places in or about the project, preferably in the same  
28 places as the prevailing rates of wage are posted under ORS 279C.840  
29 (4). The notice must describe the requirement and contain information  
30 about how to report a violation of the requirement to the commis-  
31 sioner and where to obtain further information.

1       **(5) Except as provided in subsections (2) and (3) of this section, a**  
2 **person may not take any action to circumvent the requirement set**  
3 **forth in subsection (1) of this section including, but not limited to,**  
4 **structuring the work performed on a public works project so as to**  
5 **avoid employing workers in apprenticeable occupations.**

6       **SECTION 5.** Section 4 of this 2013 Act is amended to read:

7       **Sec. 4.** (1) A contractor or subcontractor that is a party to a contract for  
8 public works for which the contract price exceeds \$750,000 shall employ ap-  
9 prentices that are participating in programs of apprenticeship and training  
10 under ORS 660.002 to 660.210 for at least [10] **12.5** percent of the total hours  
11 worked on the public works project by workers in apprenticeable occupa-  
12 tions. Either the contractor or the subcontractor may meet the requirement  
13 set forth in this subsection, except that the subcontractor shall independ-  
14 ently meet the requirement in performing work on a subcontract for which  
15 the subcontract price exceeds \$750,000.

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

27       (3) If the commissioner verifies the information in the notification, the  
28 commissioner may adjust the minimum percentage required under subsection  
29 (1) of this section to reflect the number of apprentices that are available to  
30 the contractor or subcontractor for work on the affected public works con-  
31 tract. The parties to the contract may execute an amendment to the contract

1 that reflects the adjusted minimum percentage.

2 (4) Every contractor or subcontractor engaged on a project for which  
3 there is a contract for public works shall post notices of the requirement set  
4 forth in subsection (1) of this section in conspicuous and accessible places  
5 in or about the project, preferably in the same places as the prevailing rates  
6 of wage are posted under ORS 279C.840 (4). The notice must describe the  
7 requirement and contain information about how to report a violation of the  
8 requirement to the commissioner and where to obtain further information.

9 (5) Except as provided in subsections (2) and (3) of this section, a person  
10 may not take any action to circumvent the requirement set forth in sub-  
11 section (1) of this section including, but not limited to, structuring the work  
12 performed on a public works project so as to avoid employing workers in  
13 apprenticeable occupations.

14 **SECTION 6.** Section 4 of this 2013 Act, as amended by section 5 of this  
15 2013 Act, is amended to read:

16 **Sec. 4.** (1) A contractor or subcontractor that is a party to a contract for  
17 public works for which the contract price exceeds \$750,000 shall employ ap-  
18 prentices that are participating in programs of apprenticeship and training  
19 under ORS 660.002 to 660.210 for at least [12.5] **15** percent of the total hours  
20 worked on the public works project by workers in apprenticeable occupa-  
21 tions. Either the contractor or the subcontractor may meet the requirement  
22 set forth in this subsection, except that the subcontractor shall independ-  
23 ently meet the requirement in performing work on a subcontract for which  
24 the subcontract price exceeds \$750,000.

25 (2) If a contractor or subcontractor that is subject to subsection (1) of this  
26 section is unable, at any time after executing the contract, to meet the re-  
27 quirement set forth in subsection (1) of this section because too few appren-  
28 tices are available to the contractor or subcontractor, the contractor shall  
29 notify the Commissioner of the Bureau of Labor and Industries and the  
30 public agency that awarded the contract for public works. In the notification  
31 the contractor shall document the contractor's or subcontractor's efforts to

1 locate and employ suitable apprentices in sufficient detail to enable the  
2 commissioner to verify that the contractor or subcontractor is unable to  
3 meet the requirement set forth in subsection (1) of this section because too  
4 few apprentices are available to the contractor or subcontractor.

5 (3) If the commissioner verifies the information in the notification, the  
6 commissioner may adjust the minimum percentage required under subsection  
7 (1) of this section to reflect the number of apprentices that are available to  
8 the contractor or subcontractor for work on the affected public works con-  
9 tract. The parties to the contract may execute an amendment to the contract  
10 that reflects the adjusted minimum percentage.

11 (4) Every contractor or subcontractor engaged on a project for which  
12 there is a contract for public works shall post notices of the requirement set  
13 forth in subsection (1) of this section in conspicuous and accessible places  
14 in or about the project, preferably in the same places as the prevailing rates  
15 of wage are posted under ORS 279C.840 (4). The notice must describe the  
16 requirement and contain information about how to report a violation of the  
17 requirement to the commissioner and where to obtain further information.

18 (5) Except as provided in subsections (2) and (3) of this section, a person  
19 may not take any action to circumvent the requirement set forth in sub-  
20 section (1) of this section including, but not limited to, structuring the work  
21 performed on a public works project so as to avoid employing workers in  
22 apprenticeable occupations.

23 **SECTION 7.** ORS 279C.800 is amended to read:

24 279C.800. As used in ORS 279C.800 to 279C.870:

25 (1)(a) **“Apprentice” has the meaning given that term in ORS 660.010.**

26 (b) **“Apprentice” does not include a youth apprentice as described**  
27 **in ORS 344.745 and 344.750.**

28 (2) **“Apprenticeable occupation” has the meaning given that term**  
29 **in ORS 660.010.**

30 (3) **“Apprenticeship agreement” has the meaning given that term**  
31 **in ORS 660.010.**

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

2 (a) The rate of contribution a contractor or subcontractor makes  
3 irrevocably to a trustee or to a third person under a plan, fund or program;  
4 and

5 (b) The rate of costs to the contractor or subcontractor that may be rea-  
6 sonably anticipated in providing the following items, except for items that  
7 federal, state or local law requires the contractor or subcontractor to pro-  
8 vide:

9 (A) Benefits to workers pursuant to an enforceable written commitment  
10 to the workers to carry out a financially responsible plan or program for:

11 (i) Medical or hospital care;

12 (ii) Pensions on retirement or death; or

13 (iii) Compensation for injuries or illness that result from occupational  
14 activity;

15 (B) Insurance to provide the benefits described in subparagraph (A) of this  
16 paragraph;

17 (C) Unemployment benefits;

18 (D) Life insurance;

19 (E) Disability and sickness insurance or accident insurance;

20 (F) Vacation and holiday pay;

21 (G) Costs of apprenticeship or other similar programs; or

22 (H) Other bona fide fringe benefits.

23 [(2)] (5) "Housing" has the meaning given that term in ORS 456.055.

24 [(3)] (6) "Locality" means the following district in which the public  
25 works, or the major portion thereof, is to be performed:

26 (a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

27 (b) District 2, composed of Clackamas, Multnomah and Washington  
28 Counties;

29 (c) District 3, composed of Marion, Polk and Yamhill Counties;

30 (d) District 4, composed of Benton, Lincoln and Linn Counties;

31 (e) District 5, composed of Lane County;

1 (f) District 6, composed of Douglas County;

2 (g) District 7, composed of Coos and Curry Counties;

3 (h) District 8, composed of Jackson and Josephine Counties;

4 (i) District 9, composed of Hood River, Sherman and Wasco Counties;

5 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;

6 (k) District 11, composed of Klamath and Lake Counties;

7 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and  
8 Wheeler Counties;

9 (m) District 13, composed of Baker, Union and Wallowa Counties; and

10 (n) District 14, composed of Harney and Malheur Counties.

11 [(4)] (7) "Prevailing rate of wage" means the rate of hourly wage, in-  
12 cluding all fringe benefits, that the Commissioner of the Bureau of Labor  
13 and Industries determines is paid in the locality to the majority of workers  
14 employed on projects of a similar character in the same trade or occupation.

15 [(5)] (8) "Public agency" means the State of Oregon or a political subdi-  
16 vision of the State of Oregon, or a county, city, district, authority, public  
17 corporation or public entity organized and existing under law or charter or  
18 an instrumentality of the county, city, district, authority, public corporation  
19 or public entity.

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

21 (A) Roads, highways, buildings, structures and improvements of all types,  
22 the construction, reconstruction, major renovation or painting of which is  
23 carried on or contracted for by any public agency to serve the public inter-  
24 est;

25 (B) A project that uses funds of a private entity and \$750,000 or more of  
26 funds of a public agency for constructing, reconstructing, painting or per-  
27 forming a major renovation on a privately owned road, highway, building,  
28 structure or improvement of any type;

29 (C) A project that uses funds of a private entity for constructing a pri-  
30 vately owned road, highway, building, structure or improvement of any type  
31 in which a public agency will use or occupy 25 percent or more of the square



1 footage of the completed project; or

2 (D) Notwithstanding the provisions of ORS 279C.810 (2)(a), (b) and (c), a  
3 device, structure or mechanism, or a combination of devices, structures or  
4 mechanisms, that:

5 (i) Uses solar radiation as a source for generating heat, cooling or elec-  
6 trical energy; and

7 (ii) Is constructed or installed, with or without using funds of a public  
8 agency, on land, premises, structures or buildings that a public body, as de-  
9 fined in ORS 174.109, owns.

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

11 (A) The reconstruction or renovation of privately owned property that a  
12 public agency leases; or

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

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

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

19 (iii) Contracts for the renovation were advertised or, if not advertised,  
20 were entered into before July 1, 2003, but the renovation has not been com-  
21 pleted on or before July 13, 2007.

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

23 279C.807. (1) The Bureau of Labor and Industries shall develop and adopt  
24 a plan to increase diversity statewide among workers employed on projects  
25 subject to ORS 279C.800 to 279C.870, **including apprentices that are par-**  
26 **ticipating in programs of apprenticeship and training under ORS**  
27 **660.002 to 660.210.** The bureau shall develop the plan after conducting [a]  
28 statewide public [*process*] **processes** to solicit proposals to increase diversity  
29 and shall adopt the plan after considering proposals submitted to the bureau.

30 (2) The bureau shall report each year to the Legislative Assembly or to  
31 the appropriate legislative interim committee concerning progress that re-

1 sults from *[the]* a plan adopted under this section and may submit recom-  
2 mendations for legislation or other measures that will improve diversity  
3 among workers employed on projects subject to ORS 279C.800 to 279C.870,  
4 **including apprentices that are participating in programs of appren-**  
5 **ticeship and training under ORS 660.002 to 660.210.** *[The bureau shall*  
6 *submit the first report no later than January 1, 2009.]*

7 **(3) The bureau shall revise the plan every two years in accordance**  
8 **with the procedure described in subsection (1) of this section.**

9 **SECTION 9.** ORS 279C.820 is amended to read:

10 279C.820. (1) The Commissioner of the Bureau of Labor and Industries  
11 shall appoint an advisory committee to assist the commissioner in *[the ad-*  
12 *ministration of]* **administering** ORS 279C.800 to 279C.870.

13 (2) The advisory committee must include equal representation of members  
14 from management and labor in the building and construction industry who  
15 perform work on public works contracts and *[such]* other interested parties  
16 *[as]* **that** the commissioner *[shall appoint]* **appoints.**

17 **(3) The advisory committee, at least once each year, shall evaluate**  
18 **the minimum percentage set forth in section 4 (1) of this 2013 Act and**  
19 **make recommendations to the commissioner concerning needed ad-**  
20 **justments in the minimum percentage. The advisory committee shall**  
21 **base the recommendations on actual or projected increases or de-**  
22 **creases in the availability of apprentices in apprenticeable occupations**  
23 **that employers use in connection with public works projects.**

24 **(4) The advisory committee shall consult with the State Appren-**  
25 **ticeship and Training Council when necessary to:**

26 **(a) Determine the current and projected availability of apprentices**  
27 **in apprenticeable occupations that employers use in connection with**  
28 **public works projects; and**

29 **(b) Make recommendations to the commissioner or otherwise assist**  
30 **the commissioner in administering the provisions of ORS 279C.800 to**  
31 **279C.870 related to apprenticeship requirements in public works con-**

1 **tracts.**

2 **SECTION 10.** ORS 279C.827 is amended to read:

3 279C.827. (1)(a) A public agency may not divide a public works project  
4 into more than one contract for the purpose of avoiding compliance with  
5 ORS 279C.800 to 279C.870.

6 (b) [*When*] **If** the Commissioner of the Bureau of Labor and Industries  
7 determines that a public agency has divided a public works project into more  
8 than one contract for the purpose of avoiding compliance with ORS 279C.800  
9 to 279C.870, the commissioner shall issue an order [*compelling*] **to compel**  
10 compliance.

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

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

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

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

17 (D) The manner in which the public agency and the contractors adminis-  
18 ter and implement the project;

19 (E) Whether a single public works project includes several types of im-  
20 provements or structures; and

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

23 (2) If a project is a public works of the type described in ORS 279C.800  
24 [*(6)(a)(B) or (C)*] **(9)(a)(B) or (C)**, the commissioner shall divide the project,  
25 if appropriate, after applying the considerations set forth in subsection (1)(c)  
26 of this section to separate the parts of the project that include funds of a  
27 public agency or that [*will be occupied or used by*] a public agency **will oc-**  
28 **cupy or use** from the parts of the project that do not include funds of a  
29 public agency and that [*will not be occupied or used by*] a public agency **will**  
30 **not occupy or use**. If the commissioner divides the project, any part of the  
31 project that does not include funds of a public agency and that [*will not be*

1 *occupied or used by*] a public agency **will not occupy or use** is not subject  
2 to ORS 279C.800 to 279C.870.

3 (3) If a project includes parts that are owned by a public agency and parts  
4 that are owned by a private entity, the commissioner shall divide the project,  
5 if appropriate, after applying the considerations set forth in subsections  
6 (1)(c) and (2) of this section to separate the parts of the project that are  
7 public works from the parts of the project that are not public works. If the  
8 commissioner divides the project, parts of the project that are not public  
9 works are not subject to ORS 279C.800 to 279C.870.

10 **SECTION 11.** ORS 279C.830 is amended to read:

11 279C.830. (1)(a) Except as provided in paragraph (e) of this subsection, the  
12 specifications for every contract for public works must contain a provision  
13 that states the existing state prevailing rate of wage and, if applicable, the  
14 federal prevailing rate of wage required under the Davis-Bacon Act (40  
15 U.S.C. 3141 et seq.) that must be paid to workers in each trade or occupation  
16 that the contractor or subcontractor or other person who is a party to the  
17 contract uses in performing all or part of the contract. If the prevailing rates  
18 of wage are available electronically or are accessible on the Internet, the  
19 rates may be incorporated into the specifications by referring to the elec-  
20 tronically accessible or Internet-accessible rates and by providing adequate  
21 information about how to access the rates.

22 (b) If a public agency, under paragraph (a) of this subsection, must in-  
23 clude the state and federal prevailing rates of wage in the specifications, the  
24 public agency shall also require the contractor to pay the higher of the ap-  
25 plicable state or federal prevailing rate of wage to all workers on the public  
26 works.

27 (c) Every contract and subcontract must provide that the workers must  
28 be paid not less than the specified minimum hourly rate of wage in accord-  
29 ance with ORS 279C.838 and 279C.840.

30 (d) If a public works project is subject both to ORS 279C.800 to 279C.870  
31 and to the Davis-Bacon Act, every contract and subcontract must provide

1 that workers on the public works must be paid not less than the higher of  
2 the applicable state or federal prevailing rate of wage.

3 (e) A public works project described in ORS 279C.800 [(6)(a)(B) or (C)]  
4 **(9)(a)(B) or (C)** is subject to the existing state prevailing rate of wage or,  
5 if applicable, the federal prevailing rate of wage required under the Davis-  
6 Bacon Act that is in effect at the time a public agency enters into an  
7 agreement with a private entity for the project. After that time, the specifi-  
8 cations for a contract for the public works must include the applicable pre-  
9 vailing rate of wage.

10 (2) The specifications for a contract for public works must provide that  
11 the contractor and every subcontractor must have a public works bond filed  
12 with the Construction Contractors Board before starting work on the project,  
13 unless **the contractor or subcontractor is** exempt under ORS 279C.836 (4),  
14 (7), (8) or (9). Every contract that a contracting agency awards must require  
15 the contractor to:

16 (a) Have a public works bond filed with the Construction Contractors  
17 Board before starting work on the project, unless **the contractor is** exempt  
18 under ORS 279C.836 (4), (7), (8) or (9).

19 (b) Require, in every subcontract, that the subcontractor have a public  
20 works bond filed with the Construction Contractors Board before starting  
21 work on the project, unless **the subcontractor is** exempt under ORS  
22 279C.836 (4), (7), (8) or (9).

23 **(3)(a) The specifications for every contract for public works for**  
24 **which the contract price exceeds \$750,000 must provide that the con-**  
25 **tractor and every subcontractor must be a training agent that is ap-**  
26 **proved by a local joint committee under ORS 660.137, if a local joint**  
27 **committee or program of apprenticeship and training under ORS**  
28 **660.002 to 660.210 exists in this state for the apprenticeable occupations**  
29 **that the contractor or subcontractor uses.**

30 **(b) For a contract between a public agency and a contractor for**  
31 **which the contract price exceeds \$750,000, the specifications required**

1 under paragraph (a) of this subsection must also state the minimum  
2 percentage of the total hours worked on the public works project by  
3 workers in apprenticeable occupations that must be performed by ap-  
4 prentices that are participating in programs of apprenticeship and  
5 training under ORS 660.002 to 660.210. The minimum percentage set  
6 forth in the specifications may not be less than the minimum per-  
7 centage set forth in section 4 of this 2013 Act. The contractor or any  
8 subcontractor on the public works project may employ the appren-  
9 tices, except that a subcontractor shall independently meet the mini-  
10 mum percentage requirement in performing work on any subcontract  
11 for which the contract price exceeds \$750,000.

12 (c) A contract or subcontract for public works for which the con-  
13 tract price exceeds \$750,000 must state that the contractor and every  
14 subcontractor must be a training agent that is approved by a local  
15 joint committee under ORS 660.137, if a local joint committee or pro-  
16 gram of apprenticeship and training under ORS 660.002 to 660.210 exists  
17 in this state for the apprenticeable occupations that the contractor or  
18 subcontractor uses.

19 (d) A contract or subcontract described in paragraph (c) of this  
20 subsection also must state the minimum percentage of the total hours  
21 worked on the public works project by workers in apprenticeable oc-  
22 cupations that must be performed by apprentices that are participat-  
23 ing in programs of apprenticeship and training under ORS 660.002 to  
24 660.210. The minimum percentage set forth in the contract or subcon-  
25 tract may not be less than the minimum percentage set forth in sec-  
26 tion 4 of this 2013 Act. The contractor or any subcontractor may  
27 employ the apprentices on the public works project, except that a  
28 subcontractor shall independently meet the minimum percentage re-  
29 quirement in performing work on any subcontract for which the con-  
30 tract price exceeds \$750,000.

31 SECTION 12. ORS 279C.840 is amended to read:

1 279C.840. (1) The hourly rate of wage to be paid by any contractor or  
2 subcontractor to workers upon all public works shall be not less than the  
3 prevailing rate of wage for an hour's work in the same trade or occupation  
4 in the locality where the labor is performed. The obligation of a contractor  
5 or subcontractor to pay the prevailing rate of wage may be discharged by  
6 making the payments in cash, by *[the]* making *[of]* contributions of a type  
7 referred to in ORS 279C.800 [(1)(a)] **(4)(a)**, or by *[the assumption of]* **assum-**  
8 **ing** an enforceable commitment to bear the costs of a plan or program of a  
9 type *[referred to]* **described** in ORS 279C.800 [(1)(b)] **(4)(b)**, or any combina-  
10 tion *[thereof]* **of payments, contributions or costs**, where the aggregate  
11 *[of any such]* **value of the** payments, contributions and costs is not less than  
12 the prevailing rate of wage. The contractor or subcontractor shall pay all  
13 wages due and owing to the contractor's or subcontractor's workers upon  
14 public works on the regular payday established and maintained under ORS  
15 652.120.

16 (2) After a contract for public works is executed with any contractor or  
17 work is commenced upon any public works, **a contractor or subcontractor**  
18 **may not attack** the amount of the prevailing rate of wage **in any legal**  
19 **proceeding related to the contract** *[is not subject to attack in any legal*  
20 *proceeding by any contractor or subcontractor in connection with that*  
21 *contract]*.

22 (3) It is not a defense in any legal proceeding that the prevailing rate of  
23 wage is less than the amount required to be in the specifications of a con-  
24 tract for public works, or that *[there was an agreement between]* the employee  
25 and the employer **agreed that the employee would** *[to]* work at less than  
26 the wage rates required to be paid under this section.

27 (4) Every contractor or subcontractor engaged on a project for which  
28 there is a contract for *[a]* public works shall keep the prevailing rates of  
29 wage for that project posted in a conspicuous and accessible place in or  
30 about the project. The Commissioner of the Bureau of Labor and Industries  
31 shall furnish without charge copies of the prevailing rates of wage to con-

1 tractors and subcontractors.

2 (5) Every contractor or subcontractor engaged on a project for which  
3 there is a contract for [a] public works to which the prevailing wage re-  
4 quirements apply that also provides or contributes to a health and welfare  
5 plan or a pension plan, or both, for the contractor or subcontractor's em-  
6 ployees on the project shall post a notice describing the plan in a conspicu-  
7 ous and accessible place in or about the project, [. *The notice*] preferably  
8 [*shall be posted*] in the same place as the **prevailing rates of wage** notice  
9 required under subsection (4) of this section. In addition to the description  
10 of the plan, the notice [*shall*] **must** contain information on how and where  
11 to make claims and where to obtain further information.

12 (6)(a) Except as provided in paragraph (c) of this subsection, [*no*] **a** person  
13 other than the contractor or subcontractor may **not** pay or contribute any  
14 portion of the prevailing rate of wage [*paid by*] the contractor or subcon-  
15 tractor **pays** to workers employed in [*the performance of*] **performing** a  
16 public works contract.

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

19 (c) This subsection [*is not intended to*] **does not** prohibit payments to a  
20 worker who is enrolled in any government-subsidized training or retraining  
21 program.

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

27 **SECTION 13.** ORS 279C.845 is amended to read:

28 279C.845. (1) [*The*] **A** contractor or the contractor's surety and every  
29 subcontractor or the subcontractor's surety shall file [*certified*] statements  
30 with the public agency in writing, on a form prescribed by the Commissioner  
31 of the Bureau of Labor and Industries, [*certifying*] **that certify:**



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

4 (b) That [*no*] **the contractor or subcontractor did not pay any** worker  
5 employed upon the public works [*has been paid*] less than the prevailing rate  
6 of wage or less than the minimum hourly rate of wage specified in the con-  
7 tract.

8 (2) [*The certified statement shall be verified by the oath of*] The contractor  
9 or the contractor's surety or subcontractor or the subcontractor's surety  
10 **shall certify by oath** that the contractor or subcontractor has read the  
11 [*certified*] statement, that the contractor or subcontractor knows the contents  
12 of the [*certified*] statement and that to the contractor or subcontractor's  
13 knowledge the [*certified*] statement is true.

14 (3) The certified statements shall set out accurately and completely the  
15 contractor's or subcontractor's payroll records, including the name and ad-  
16 dress of each worker, the worker's correct classification, **the worker's ap-**  
17 **prenticeship agreement registration number, if any**, rate of pay, daily  
18 and weekly number of hours worked and the gross wages the worker earned  
19 upon the public works during each week identified in the certified statement.

20 (4) **In addition to the certified statements required by subsection (1)**  
21 **of this section, the contractor or the contractor's surety and every**  
22 **subcontractor or the subcontractor's surety shall file apprenticeship**  
23 **utilization statements with the public agency, in writing and on a form**  
24 **that the commissioner prescribes, that show the weekly cumulative**  
25 **total of hours worked on the public works project by apprentices that**  
26 **are participating in programs of apprenticeship and training under**  
27 **ORS 660.002 to 660.210. The contractor or contractor's surety and the**  
28 **subcontractor or subcontractor's surety shall certify the statements**  
29 **as provided in subsection (2) of this section.**

30 [(4)] (5) **Once each month**, the contractor or subcontractor shall deliver  
31 or mail **to the public agency** each certified statement required [*by sub-*

1 *section (1)* **under subsections (1) and (4)** of this section [*to the public*  
2 *agency. Certified statements*] for each week during which the contractor or  
3 subcontractor employs a worker upon the public works. [*shall be submitted*  
4 *once a month,*] **The contractor or subcontractor shall deliver the certi-**  
5 **fied statements** by the fifth business day of the following month. Infor-  
6 mation submitted on certified statements may be used only to ensure  
7 compliance with the provisions of ORS 279C.800 to 279C.870.

8 [(5)] **(6)** Each contractor or subcontractor shall preserve the certified  
9 statements **required under this section** for a period of three years [*from*]  
10 **after** the date of completion of the contract.

11 [(6)] **(7)** Certified statements [*received by*] a public agency **receives under**  
12 **this section** are public records subject to the provisions of ORS 192.410 to  
13 192.505.

14 [(7)] **(8)** Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor  
15 [*is required to*] **must** file certified statements under this section, the public  
16 agency shall retain 25 percent of any amount [*earned by*] the contractor  
17 **earns** on the public works until the contractor has filed [*with the public*  
18 *agency*] certified statements **with the public agency** as required by this  
19 section. The public agency shall pay the contractor the amount retained  
20 under this subsection within 14 days after the contractor files the certified  
21 statements as required by this section, regardless of whether a subcontractor  
22 has failed to file certified statements as required by this section. [*The public*  
23 *agency is not required to verify the truth of the contents of certified statements*  
24 *filed by the contractor under this section.*]

25 [(8)] **(9)** Notwithstanding ORS 279C.555, the contractor shall retain 25  
26 percent of any amount [*earned by*] a first-tier subcontractor **earns** on a  
27 public works until the subcontractor has filed [*with the public agency*] cer-  
28 tified statements **with the public agency** as required by this section. The  
29 contractor shall verify that the first-tier subcontractor has filed the certified  
30 statements before the contractor may pay the subcontractor any amount **the**  
31 **contractor retains** [*retained*] under this subsection. The contractor shall

1 pay the first-tier subcontractor the amount [*retained*] **the contractor re-**  
2 **tains** under this subsection within 14 days after the subcontractor files the  
3 certified statements as required by this section. [*Neither the public agency*  
4 *nor the contractor is required to verify the truth of the contents of certified*  
5 *statements filed by a first-tier subcontractor under this section.*]

6 **(10) This section does not require:**

7 **(a) A public agency to verify the truth of the contents of certified**  
8 **statements a contractor files under this section; or**

9 **(b) A public agency or a contractor to verify the truth of the con-**  
10 **tents of certified statements a subcontractor files under this section.**

11 **SECTION 14.** ORS 279C.850 is amended to read:

12 279C.850. (1) At any reasonable time the Commissioner of the Bureau of  
13 Labor and Industries may enter the office or business establishment of any  
14 contractor or subcontractor performing public works and gather facts and  
15 information necessary to determine whether the [*prevailing rate of wage is*  
16 *actually being paid by such contractor or subcontractor to workers upon public*  
17 *works.*] **contractor or subcontractor is:**

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

20 **(b) Meeting the requirement set forth in section 4 of this 2013 Act.**

21 (2) [*Upon request by the commissioner*] **At the commissioner's request,**  
22 every contractor or subcontractor performing work on public works shall  
23 make available to the commissioner for inspection during normal business  
24 hours any payroll or other records in the possession or under the control of  
25 the contractor or subcontractor that are deemed necessary by the commis-  
26 sioner to determine whether the [*prevailing rate of wage is actually being*  
27 *paid by such*] contractor or subcontractor **is actually paying the prevailing**  
28 **rate of wage to workers upon public works and whether the contractor**  
29 **or subcontractor is meeting the requirement set forth in section 4 of**  
30 **this 2013 Act.** The [*commissioner's*] **commissioner must make the request**  
31 [*must be made*] **within** a reasonable time [*in advance of*] **before** the in-

1 spection.

2 (3) Notwithstanding ORS 192.410 to 192.505, any record [*obtained or made*  
 3 *by*] the commissioner **obtains or makes** under this section is not open to  
 4 inspection by the public.

5 (4) The commissioner may, without necessity of an assignment, initiate  
 6 legal proceedings against employers to enjoin future failures to pay required  
 7 prevailing rates of wage or overtime pay and to require the [*payment of*]  
 8 **employers to pay** prevailing rates of wage or overtime pay due employees.  
 9 The commissioner [*is entitled to*] **may** recover, in addition to other costs,  
 10 such sum as the court or judge may determine reasonable as attorney fees.  
 11 If the commissioner does not prevail in the action, the commissioner shall  
 12 pay all costs and disbursements from the Bureau of Labor and Industries  
 13 Account.

14 **SECTION 15.** ORS 279C.865 is amended to read:

15 279C.865. (1) In addition to any other penalty provided by law, the Com-  
 16 missioner of the Bureau of Labor and Industries may assess a civil penalty  
 17 not to exceed [*\$5,000*] **\$3,000** for each violation of any provision of ORS  
 18 279C.800 to 279C.870 or any rule of the commissioner adopted thereunder.

19 **(2) In addition to any penalty assessed under subsection (1) of this**  
 20 **section, the commissioner may assess a civil penalty for violating the**  
 21 **requirement set forth in section 4 of this 2013 Act in an amount equal**  
 22 **to \$20 multiplied by the number of hours required under section 4 of**  
 23 **this 2013 Act to be performed by apprentices that are participating in**  
 24 **programs of apprenticeship and training under ORS 660.002 to 660.210,**  
 25 **less an amount equal to \$20 multiplied by the number of hours of work**  
 26 **that apprentices actually perform.**

27 [(2)] (3) Civil penalties under this section shall be imposed as provided  
 28 in ORS 183.745.

29 [(3)] (4) All moneys collected as penalties under **subsection (1) of this**  
 30 **section** [*shall*] **must** be first applied toward [*reimbursement of*] **reimbursing**  
 31 **costs incurred in determining violations, conducting hearings and assessing**

1 and collecting the penalties. The remainder, if any, of moneys collected as  
2 penalties under **subsection (1) of this section** shall be paid into the State  
3 Treasury and credited to the General Fund and are available for general  
4 governmental expenses.

5 **(5) All moneys collected as penalties under subsection (2) of this**  
6 **section must be paid into the State Treasury and the State Treasurer**  
7 **shall deposit the moneys into the State Apprenticeship Training and**  
8 **Education Fund established in section 16 of this 2013 Act.**

9 **SECTION 16. (1) The State Apprenticeship Training and Education**  
10 **Fund is established in the State Treasury, separate and distinct from**  
11 **the General Fund. Interest earned by the State Apprenticeship Train-**  
12 **ing and Education Fund shall be credited to the fund. The moneys in**  
13 **the State Apprenticeship Training and Education Fund are contin-**  
14 **uously appropriated to the State Apprenticeship and Training Council**  
15 **for the purposes of:**

16 **(a) Making grants on a competitive basis, in consultation with the**  
17 **Department of Education and the Department of Community Colleges**  
18 **and Workforce Development and in conformance with a plan adopted**  
19 **under ORS 279C.807, to programs that directly provide career technical**  
20 **education for occupations prevalent in the construction and manu-**  
21 **facturing industries; and**

22 **(b) Overseeing and monitoring apprenticeship and training pro-**  
23 **grams, including programs identified in paragraph (a) of this sub-**  
24 **section, for compliance with applicable rules, standards and laws.**

25 **(6) The State Apprenticeship and Training Council may make**  
26 **grants from the State Apprenticeship Training and Education Fund**  
27 **described in this section to:**

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

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

1 (c) Public post-secondary educational institutions.

2 **SECTION 17. (1) Sections 2, 4 and 16 of this 2013 Act and the**  
3 **amendments to ORS 279C.800, 279C.807, 279C.820, 279C.827, 279C.830,**  
4 **279C.840, 279C.845, 279C.850 and 279C.865 by sections 7 to 15 of this 2013**  
5 **Act apply to a public works contract that a public agency first adver-**  
6 **tises, or if the public agency does not advertise the public works con-**  
7 **tract, to a contract into which the public agency first enters on or**  
8 **after the effective date of this 2013 Act.**

9 (2) The amendments to section 4 of this 2013 Act by section 5 of this  
10 2013 Act:

11 (a) Become operative on January 1, 2015; and

12 (b) Apply to a public works contract that a public agency first ad-  
13 vertises, or if the public agency does not advertise the public works  
14 contract, to a contract into which the public agency first enters on  
15 or after January 1, 2015.

16 (3) The amendments to section 4 of this 2013 Act by section 6 of this  
17 2013 Act:

18 (a) Become operative on January 1, 2016; and

19 (b) Apply to a public works contract that a public agency first ad-  
20 vertises, or if the public agency does not advertise the public works  
21 contract, to a contract into which the public agency first enters on  
22 or after January 1, 2016.

23