

A-Engrossed
House Bill 3115

Ordered by the House April 18
Including House Amendments dated April 18

Sponsored by COMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT

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.

[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.]

Requires state contracting agency, in specifications, solicitation documents and contract for public improvement with contract price that state contracting agency anticipates will exceed \$5 million, to require contractor and subcontractor to employ apprentices for at least 10 percent of total work hours that workers in apprenticeable occupations perform on public improvement. Raises percentage of required apprentices to 15 percent on public improvement contracts with anticipated contract price of \$3 million on January 1, 2017. Specifies certain exemptions from requirement.

Provides that state contracting agency shall retain amount equivalent to not more than three percent of amount due contractor under contract for public improvement and pay contractor, when contractor completes public improvement, amount withheld less \$20 for each hour in which contractor or subcontractor did not employ apprentice for work that apprentice must perform under provisions of Act. Requires state contracting agency to pay amount state contracting agency withholds and does not pay to contractor into State Apprenticeship Education and Training Fund.

Establishes State Apprenticeship [Training and] Education and Training 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.

Becomes operative January 1, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to apprenticeship; creating new provisions; amending ORS 279C.850; appropriating money;
3 and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 6 of this 2013 Act are added to and made a part of ORS**
6 **chapter 279C.**

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 **SECTION 2.** (1) As used in this section:

2 (a)(A) “Apprentice” has the meaning given that term in ORS 660.010.

3 (B) “Apprentice” does not include a youth apprentice as described in ORS 344.745 and
4 344.750.

5 (b) “Apprenticeable occupation” has the meaning given that term in ORS 660.010.

6 (2) In specifications and solicitation documents for every procurement for a public im-
7 provement that a state contracting agency anticipates will have a total contract price that
8 exceeds \$5 million, the state contracting agency shall notify prospective bidders and
9 proposers that the state contracting agency will require each contractor and subcontractor
10 to employ apprentices who are participating in programs of apprenticeship and training un-
11 der ORS 660.002 to 660.210 for at least 10 percent of the total work hours that workers in
12 apprenticeable occupations perform, as applicable, on the entire public improvement or under
13 each contract or subcontract for the public improvement that has a contract price that ex-
14 ceeds \$500,000.

15 (3) Except as provided in subsection (7) of this section, each public improvement contract
16 between a state contracting agency and a contractor that has a contract price that exceeds
17 \$500,000 and is part of a public improvement for which the total contract price exceeds \$5
18 million shall provide that:

19 (a) Each contractor shall employ apprentices that are participating in programs of ap-
20 prenticeship and training under ORS 660.002 to 660.210 for at least 10 percent of the total
21 work hours that workers in apprenticeable occupations perform on the public improvement;
22 and

23 (b) Each contractor, in each subcontract for which the contract price exceeds \$500,000,
24 shall require the subcontractor to employ apprentices that are participating in programs of
25 apprenticeship and training under ORS 660.002 to 660.210 for at least 10 percent of the total
26 work hours that workers in apprenticeable occupations perform on the public improvement.

27 (4)(a) A state contracting agency shall retain an amount equivalent to not more than
28 three percent of the amount due a contractor under a contract for an entire public im-
29 provement or, as appropriate, under each contract or subcontract for the public improve-
30 ment. Within 10 days after the contractor completes the public improvement, or within the
31 time otherwise specified in the public improvement contract, the state contracting agency
32 shall pay the contractor the amount the state contracting agency retained, less \$20 for each
33 hour in which the contractor or a subcontractor that is subject to this section did not em-
34 ploy an apprentice for work that an apprentice must perform under subsection (3) of this
35 section.

36 (b) A state contracting agency shall immediately pay into the State Apprenticeship Edu-
37 cation and Training Fund any moneys that remain after the state contracting agency pays
38 the amount due a contractor from amounts the state contracting agency retained under
39 paragraph (a) of this subsection.

40 (5) Each contractor or subcontractor that is subject to the requirement set forth in
41 subsection (3) of this section shall post notices of the requirement in conspicuous and ac-
42 cessible places in or around the construction site for the public improvement. The notices
43 must describe the requirement and contain information about how to report a violation of
44 the requirement to the Commissioner of the Bureau of Labor and Industries and where to
45 obtain further information.

1 (6) A person may not take any action to circumvent the requirements set forth in this
2 section including, but not limited to, structuring the work performed on a public improve-
3 ment so as to avoid employing workers in apprenticeable occupations.

4 (7)(a) The requirement to employ apprentices in accordance with subsection (3) of this
5 section does not apply to:

6 (A) A business that is certified as a disadvantaged, minority, women or emerging small
7 business enterprise under ORS 200.055 if the business has existed for less than five years;
8 or

9 (B) The Department of Transportation, except that:

10 (i) The department must have in the department's public improvement contracts re-
11 quirements that are substantially similar to the requirement set forth in subsection (3) of
12 this section or that require a contractor to employ a higher percentage of apprentices to
13 perform work on the public improvement than the percentage set forth in subsection (3) of
14 this section; and

15 (ii) The department is subject to the requirements set forth in ORS 279C.850 and section
16 6 of this 2013 Act.

17 (b) This section applies to the State Board of Higher Education, to the Oregon University
18 System as described in ORS 351.011, to a public university listed in ORS 352.002 as of January
19 1, 2013, and to a community college as defined in ORS 341.005.

20 **SECTION 3.** Section 2 of this 2013 Act is amended to read:

21 **Sec. 2.** (1) As used in this section:

22 (a)(A) "Apprentice" has the meaning given that term in ORS 660.010.

23 (B) "Apprentice" does not include a youth apprentice as described in ORS 344.745 and 344.750.

24 (b) "Apprenticeable occupation" has the meaning given that term in ORS 660.010.

25 (2) In specifications and solicitation documents for every procurement for a public improvement
26 that a state contracting agency anticipates will have a total contract price that exceeds [~~\$5~~
27 *million*] **\$3 million**, the state contracting agency shall notify prospective bidders and proposers that
28 the state contracting agency will require each contractor and subcontractor to employ apprentices
29 who are participating in programs of apprenticeship and training under ORS 660.002 to 660.210 for
30 at least [~~10~~] **15** percent of the total work hours that workers in apprenticeable occupations perform,
31 as applicable, on the entire public improvement or under each contract or subcontract for the public
32 improvement that has a contract price that exceeds [~~\$500,000~~] **\$300,000**.

33 (3) Except as provided in subsection (7) of this section, each public improvement contract be-
34 tween a state contracting agency and a contractor that has a contract price that exceeds
35 [~~\$500,000~~] **\$300,000** and is part of a public improvement for which the total contract price exceeds
36 [~~\$5 million~~] **\$3 million** shall provide that:

37 (a) Each contractor shall employ apprentices that are participating in programs of apprentice-
38 ship and training under ORS 660.002 to 660.210 for at least [~~10~~] **15** percent of the total work hours
39 that workers in apprenticeable occupations perform on the public improvement; and

40 (b) Each contractor, in each subcontract for which the contract price exceeds [~~\$500,000~~]
41 **\$300,000**, shall require the subcontractor to employ apprentices that are participating in programs
42 of apprenticeship and training under ORS 660.002 to 660.210 for at least [~~10~~] **15** percent of the total
43 work hours that workers in apprenticeable occupations perform on the public improvement.

44 (4)(a) A state contracting agency shall retain, from amounts due to a contractor under a public
45 improvement contract, \$20 for each hour in which the contractor or a subcontractor that is subject

1 to this section does not employ an apprentice for work that an apprentice must perform under sub-
2 section (3) of this section, up to a maximum of three percent of the contract price for, as appropri-
3 ate, the entire public improvement or a contract or subcontract for the public improvement.

4 (b) If the contractor or a subcontractor meets the requirement set forth in subsection (3) of this
5 section before completing the public improvement, the state contracting agency shall pay to the
6 contractor the amount the state contracting agency retains under paragraph (a) of this subsection.

7 (c) At the time a public improvement is completed, a state contracting agency shall pay into the
8 State Apprenticeship Education and Training Fund moneys that the state contracting agency re-
9 tained under paragraph (a) of this subsection and did not pay to the contractor under paragraph (b)
10 of this subsection.

11 (5) Each contractor or subcontractor that is subject to the requirement set forth in subsection
12 (3) of this section shall post notices of the requirement in conspicuous and accessible places in or
13 around the construction site for the public improvement. The notices must describe the requirement
14 and contain information about how to report a violation of the requirement to the Commissioner of
15 the Bureau of Labor and Industries and where to obtain further information.

16 (6) A person may not take any action to circumvent the requirements set forth in this section
17 including, but not limited to, structuring the work performed on a public improvement so as to avoid
18 employing workers in apprenticeable occupations.

19 (7)(a) The requirement to employ apprentices in accordance with subsection (3) of this section
20 does not apply to:

21 (A) A business that is certified as a disadvantaged, minority, women or emerging small business
22 enterprise under ORS 200.055 if the business has existed for less than five years; or

23 (B) The Department of Transportation, except that:

24 (i) The department must have in the department's public improvement contracts requirements
25 that are substantially similar to the requirement set forth in subsection (3) of this section or that
26 require a contractor to employ a higher percentage of apprentices to perform work on the public
27 improvement than the percentage set forth in subsection (3) of this section; and

28 (ii) The department is subject to the requirements set forth in ORS 279C.850 and section 6 of
29 this 2013 Act.

30 (b) This section applies to the State Board of Higher Education, to the Oregon University Sys-
31 tem as described in ORS 351.011, to a public university listed in ORS 352.002 as of January 1, 2013,
32 and to a community college as defined in ORS 341.005.

33 **SECTION 4. Section 5 of this 2013 Act is added to and made a part of ORS 660.002 to**
34 **660.210.**

35 **SECTION 5. (1) The State Apprenticeship Education and Training Fund is established in**
36 **the State Treasury, separate and distinct from the General Fund. The moneys in the State**
37 **Apprenticeship Education and Training Fund consist of amounts that state contracting**
38 **agencies retain from public improvement contracts and do not pay to contractors in ac-**
39 **cordance with section 2 of this 2013 Act.**

40 **(2) Moneys in the State Apprenticeship Education and Training Fund may be invested as**
41 **provided in ORS 293.701 to 293.820. Interest from any source derived from investing the**
42 **moneys of the fund must be credited to the fund.**

43 **(3) The moneys in the State Apprenticeship Education and Training Fund are contin-**
44 **uously appropriated to the State Apprenticeship and Training Council for the purposes of:**

45 **(a) Making grants on a competitive basis and in conformance with a plan adopted under**

1 **ORS 279C.807 to programs that directly provide career and technical education for occupa-**
2 **tions prevalent in the construction and manufacturing industries. The council may consult**
3 **the Department of Education in determining which programs should receive grants.**

4 **(b) Overseeing and monitoring apprenticeship education and training programs, including**
5 **programs identified in paragraph (a) of this subsection, for compliance with applicable rules,**
6 **standards and laws.**

7 **(4) The council may make grants from the State Apprenticeship Education and Training**
8 **Fund for the purposes described in subsection (3)(a) of this section to:**

9 **(a) Apprenticeship education and training programs, direct entry programs, and preap-**
10 **prenticeship and youth apprenticeship programs that are registered with the council;**

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

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

13 **SECTION 6. (1) A public improvement contract between a state contracting agency and**
14 **a contractor shall provide that a contractor or subcontractor that is subject to section 2 of**
15 **this 2013 Act, or the contractor or subcontractor's surety, shall submit to the state con-**
16 **tracting agency the statements described in ORS 279C.845, even if the public improvement**
17 **is not otherwise subject to the provisions of ORS 279C.800 to 279C.870. Statements that a**
18 **contractor or subcontractor submits to a state contracting agency under this subsection, in**
19 **addition to the information required under ORS 279C.845, must include each worker's ap-**
20 **prenticeship agreement registration number, if the worker has a number.**

21 **(2) A state contracting agency, using the information included in the statements de-**
22 **scribed in subsection (1) of this section, shall total and compare the number of work hours**
23 **that workers in apprenticeable occupations performed under a public improvement contract**
24 **with the number of work hours that apprentices performed under the public improvement**
25 **contract to verify the extent to which the contractor or subcontractor complied with the**
26 **requirements set forth in section 2 of this 2013 Act.**

27 **SECTION 7. ORS 279C.850 is amended to read:**

28 **279C.850. (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries**
29 **may enter the office or business establishment of any contractor or subcontractor performing work**
30 **under a public improvement contract or on public works and gather facts and information nec-**
31 **essary to determine whether the [prevailing rate of wage is actually being paid by such contractor**
32 **or subcontractor to workers upon public works.] contractor or subcontractor is:**

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

34 **(b) Meeting the requirement set forth in section 2 of this 2013 Act for work under a**
35 **public improvement contract.**

36 **(2) [Upon request by the commissioner] At the commissioner's request, every contractor or**
37 **subcontractor performing work under a public improvement contract or on public works shall**
38 **make available to the commissioner for inspection during normal business hours any payroll or other**
39 **records in the possession or under the control of the contractor or subcontractor that are deemed**
40 **necessary by the commissioner to determine whether the [prevailing rate of wage is actually being**
41 **paid by such] contractor or subcontractor is actually paying the prevailing rate of wage to**
42 **workers upon public works and whether the contractor or subcontractor is meeting the re-**
43 **quirement set forth in section 2 of this 2013 Act for work under a public improvement con-**
44 **tract. The [commissioner's] commissioner must make the request [must be made] within a**
45 **reasonable time [in advance of] before the inspection.**

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

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

10 **SECTION 8.** (1) Sections 2, 5 and 6 of this 2013 Act and the amendments to ORS 279C.850
11 **by section 7 of this 2013 Act become operative January 1, 2014.**

12 (2) The amendments to section 2 of this 2013 Act by section 3 of this 2013 Act become
13 **operative January 1, 2017, and apply to public improvement contracts that a state contract-**
14 **ing agency first advertises or otherwise solicits on or after January 1, 2017, or, if the state**
15 **contracting agency does not advertise or solicit the public improvement contract, to a public**
16 **improvement contract into which the state contracting agency first enters on or after Jan-**
17 **uary 1, 2017.**

18 (3) Sections 2, 5 and 6 of this 2013 Act and the amendments to ORS 279C.850 by section
19 **7 of this 2013 Act apply to public improvement contracts that a state contracting agency first**
20 **advertises or otherwise solicits on or after the operative date specified in subsection (2) of**
21 **this section or, if the state contracting agency does not advertise or solicit the public im-**
22 **provement contract, to a public improvement contract into which the state contracting**
23 **agency first enters on or after the operative date specified in subsection (2) of this section.**

24 (4) A state contracting agency that adopts rules under ORS 279A.065 may take any action
25 **before the operative date specified in subsection (2) of this section that is necessary to enable**
26 **the state contracting agency to exercise, on and after the operative date specified in sub-**
27 **section (2) of this section, all of the duties, functions and powers conferred on the state**
28 **contracting agency by sections 2, 5 and 6 of this 2013 Act and the amendments to ORS**
29 **279C.850 by section 7 of this 2013 Act.**

30 **SECTION 9.** This 2013 Act being necessary for the immediate preservation of the public
31 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
32 **on its passage.**